Banking Policy Issues in the 117th Congress

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SUMMARY

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Over the past 14 years, banking has experienced significant events and changes and has regularly been the subject of policymaker initiatives and debates. In response to the 2007-2009 financial crisis, Congress—primarily through the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act; P.L. 111-203)—and bank regulators, using new and existing authorities, increased bank regulation. While some observers view those changes as necessary and effective, others argued that certain regulations were unjustifiably burdensome. To address those concerns, the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174) relaxed certain regulations. Opponents of that legislation argue that it unnecessarily pared back important safeguards, while proponents of deregulation argue that additional measures are needed. More recently, the Coronavirus Disease 2019 (COVID-19) pandemic has created unprecedented economic conditions that could stress the banking industry. As a result, the 117th Congress faces many issues related to banking, including:

- **Safety and soundness.** Banks are subject to prudential regulations designed to reduce the likelihood of bank failures, and banks face certain rules about how they should value their assets and account for losses. In addition, anti-money-laundering requirements aim to block transactions involving criminal proceeds. Banks are also required to take steps to avoid cyberattacks. The extent to which these regulations are effective and appropriately balance benefits and costs is a matter of debate.
- **Consumer fairness and access.** Certain laws are designed to protect consumers and ensure that lenders use fair lending practices. Generally, policymakers balance consumer protection, credit access, and industry costs when considering consumer protection laws and regulation and encourage access to banking services for disadvantaged consumers. In addition, one bank regulator has revised its Community Reinvestment Act (CRA, P.L. 95-182) regulatory framework while the other two regulators have not, raising concern that the CRA could be implemented inconsistently.
- **COVID-19 effects and policy responses.** The COVID-19 pandemic has impaired the ability of millions of businesses and individuals to make repayments on their bank loans. Furthermore, the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) will have direct or indirect effects on banks. Congress may examine questions related to stress in the banking industry, the expiration of loan forbearances and of bank regulatory relief granted pursuant to the CARES Act, and the regulatory implications of bank asset growth caused by the pandemic and policy responses to it.
- **Community banks.** The number of small or "community" banks has declined substantially in recent decades. No consensus exists on the degree to which the removal of regulatory barriers to interstate branching and banking, market forces, and regulatory burden are causing the decline. Because these institutions are considered important sources of credit, Congress may consider policies to support them.
- **Large banks and "too big to fail."** Very large and complex financial institutions may contribute to financial system instability. Dodd-Frank Act provisions include enhanced prudential regulation for certain large banks to mitigate those risks. Subsequently, Congress reduced the number of banks subject to the Dodd-Frank measures in P.L. 115-174, and regulators have made changes using existing authorities to reduce regulatory burden. Whether relaxing these rules will provide needed relief to these banks or be viewed to unnecessarily pare back important safeguards is a debated issue.
- **"Fintech" in banking.** Advances in digital technology have made it possible to perform financial activities and deliver financial services through innovative methods, which affects banks in a number of ways. Banks may face competition from new financial technology ("fintech") companies or may choose to establish contractual arrangements with them to provide services to customers. Policymakers face questions about whether charters should be granted to such companies and whether the regulatory framework governing bank partnerships with fintech firms should change.
- **Environment, social, and governance (ESG) issues.** Investor and societal expectations that banks consider and address ESG issues has been growing in recent years. Large banks in particular have faced scrutiny about providing credit and other services to certain companies and industries. In addition, policymakers have recently increased their attention on how banks and regulators are reacting to climate change risks.

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Introduction

Banks play a central role in the financial system by connecting borrowers to savers and allocating available funds across the economy.[1] As a result, banking is vital to the U.S. economy's health and growth. At the same time, banking is an inherently risky activity involving extending credit and taking on liabilities. While banking can generate tremendous societal and economic benefits, bank panics and failures can create devastating losses. Over time, a regulatory system designed to foster the benefits of banking while limiting risks has developed, and both banks and regulation have coevolved as market conditions have changed and different risks have emerged. For these reasons, Congress often considers policies related to the banking industry.

The 2007-2009 financial crisis, which threatened the collapse of the financial system and the real economy,[2] began a transformative period in the banking industry. Many observers argued the crisis revealed that the financial system was excessively risky and the regulatory regime governing the financial system had serious weaknesses.[3] Policymakers responded to the perceived weaknesses in the pre-crisis financial regulatory regime by implementing numerous changes to financial regulation, including bank regulation.

Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act; P.L. 111-203) in 2010 with the intention of strengthening regulation and addressing risks.[4] In addition, U.S. bank regulators have implemented changes under their existing authorities, many of which generally adhere to the Basel III Accords—an international framework for bank regulation agreed to by U.S. and international bank regulators—that called for making certain bank regulations more stringent.

In the ensuing years, some observers raised concerns that the potential benefits of those regulatory changes (e.g., better-managed risks, increased consumer protection, greater systemic stability, potentially higher economic growth over the long term) were outweighed by the potential costs (e.g., compliance costs incurred by banks, reduced credit availability for consumers and businesses, potentially slower economic growth). In response to these concerns, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA; P.L. 115-174).[5] Among other things, the law relaxed certain (1) regulations facing

[1] In general, this report uses the term *bank* interchangeably to mean (1) a depository institution insured by the Federal Deposit Insurance Corporation or (2) a parent bank holding company of such an institution. A distinction will be made when the policy issue is applicable only to a specific type of institution or if a distinction is otherwise necessary. Credit unions—although also affected by several of the policy issues covered—are not the focus of this report, thus the term *banks* should not be interpreted as including those institutions, unless otherwise noted. For more information on the distinctions between credit unions and banks, see CRS In Focus IF11048, *Introduction to Bank Regulation: Credit Unions and Community Banks: A Comparison*, by Darryl E. Getter.

[2] What the true potential for this outcome was is a matter of debate. Many observers assert that only huge and unprecedented government interventions staved off a collapse. For example, see testimony of Treasury Secretary Timothy F. Geithner, in U.S. House Financial Services Committee, *Financial Regulatory Reform*, September 23, 2009, https://www.treasury.gov/press-center/press-releases/Pages/tg296.aspx. Others argue that government interventions were unnecessary or potentially exacerbated the crisis. For example, see John B. Taylor, *Responses to Additional Questions from the Financial Crisis Inquiry Commission*, Stanford University, November 2009, http://web.stanford.edu/~johntayl/Responses%20to%20FCIC%20questions%20John%20B%20Taylor.pdf.

[3] Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report*, January 2011, pp. xv-xxviii, https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.

[4] For more information on the Dodd-Frank Act, see CRS Report R41350, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Background and Summary*, coordinated by Baird Webel.

[5] For more information on EGRRCPA, see CRS Report R45073, *Economic Growth, Regulatory Relief, and Consumer*

small banks, (2) regulations facing banks large enough to be subjected to Dodd-Frank enhanced regulation but still below the size thresholds exceeded by the very largest banks, and (3) mortgage regulations facing lenders including banks.

In addition, federal banking regulatory agencies—the Federal Reserve, the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC)[6]—have implemented further changes in regulation using existing authority. Implementing the regulatory changes prescribed in the aftermath of the crisis and made pursuant to the Dodd-Frank Act occurred over the course of years. In recent years, the banking regulators expressed the belief that, after having viewed the effects of the regulations, they had the necessary information to determine which regulations may be ineffective or inefficient as currently implemented. During that time, these regulators made of number of regulatory changes with the aim of reducing regulatory burden. A key issue surrounding regulatory relief made pursuant to the EGRRCPA and regulator-initiated changes is whether these measures reduced regulatory burden without undermining the goals and effectiveness of the regulations or whether more stringent regulation should be reinstated.

As these changes were being made and debated, the economy experienced another dramatic downturn, this time because of the Coronavirus Disease 2019 (COVID-19) pandemic. The sudden, large economic contraction may impose unexpected and potentially large losses on banks, putting the current regulatory framework to the test for the first time. Any resulting policy responses to the crisis will also affect banks and their regulations. Whether these responses are appropriately calibrated, need modification, or should be extended for additional time may be subject to debate.

Meanwhile, industry trends and economic conditions that preceded the pandemic continue to affect the banking industry. The industry continues to consolidate, and the number of small "community banks" continues to decline. Banks increasingly compete and partner with companies in the financial technology (known as "fintech") industry. In addition, the public is paying increased attention to bank governance (i.e., how bank organizations are led and run) and the environmental and social effects of banks' business decisions.

This report provides a broad overview of selected banking-related issues that may attract congressional interest in the 117th Congress, including issues related to:

- prudential (or "safety and soundness") regulation;
- consumer access and fairness;
- the effects of the COVID-19 pandemic and the policy responses to it;
- community banks;

Protection Act (P.L. 115-174) and Selected Policy Issues, coordinated by David W. Perkins.

[6] All banks are regulated by a primary federal prudential regulator for "safety and soundness," which is determined by a bank's charter type and whether the bank is a member of the Federal Reserve System (FRS). The federal prudential regulators are the Federal Reserve, the OCC, and the FDIC. The OCC is the primary prudential regulator for all national banks, which are required to be members of the FRS (1,060 banks as of October 29, 2020). The Federal Reserve is the primary prudential regulator of state banks that are members of the FRS (736 banks). The FDIC is the primary prudential regulator of state banks that are not members of the FRS (3,242 banks). Banks are also supervised for compliance with consumer protection and fair lending laws. For banks with assets of $10 billion or less, their primary prudential regulator also generally serves as their consumer compliance supervisor. The Consumer Financial Protection Bureau is generally the primary supervisor for consumer compliance for banks with more than $10 billion, as discussed in the "Consumer Fairness and AccessBackground" section of this report. Banks chartered at the state level are also regulated by state-level bank regulatory agencies. Parent companies that own banks, called *bank holding companies*, are regulated by the Federal Reserve.

- the regulation of the largest banks (sometimes characterized as "too big to fail");
- fintech in banking; and
- environmental, social, and governance (ESG) issues.

In addition, this report provides a list of CRS reports and resources that examine specific issues in more detail in the **Appendix**.

"Safety and Soundness"

Banks face a number of regulations intended to ensure that they operate in a safe and sound manner. This section provides background on these regulations and analyzes selected issues related to them in the areas of:

- prudential regulations designed to limit bank losses and improve banks' ability to absorb losses without failing;
- a new standard for accounting for future losses called the Current Expected Credit Loss standard;
- requirements related to anti-money-laundering laws, such as the Bank Secrecy Act (P.L. 91-508); and
- requirements related to cybersecurity, such as those implemented pursuant to Title V of the Gramm-Leach-Bliley Act (GLBA; P.L. 106-102).

Background

To make bank failures less likely—and to reduce losses when they do occur—regulators use *prudential regulation* (also called *safety and soundness regulation*). In addition, banks must include adjustments based on expected future losses when accounting for the value of their loans. Banks are also subject to regulations intended to reduce the prevalence of crime. For example, *anti-money-laundering* measures aim to stop criminals from using the banking system to conduct or hide illegal operations. *Cybersecurity* regulations are aimed at protecting banks and their customers from becoming victims of cybercrime, such as denial-of-service attacks or data theft.

Prudential Regulation[7]

Banks profit in part because their assets are generally riskier, longer term, and more illiquid than their liabilities, which allows the banks to earn more interest on their assets than they pay on their liabilities.[8] The practice is usually profitable, but it does expose banks to risks, such as borrower default, that can potentially lead to failure. Because of the role banks play in finance and the economy, the failure of a sufficiently large number of banks or of a small number (perhaps just one) of large banks can threaten the stability of the whole financial system and real economy. In response, the government has constructed "safety nets"—for example, making the Federal Reserve "a lender of last resort" for banks with cash flow problems and making the FDIC the federal insurer of deposits—to reduce the occurrence of failures and protect against depositor

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[7] This section was authored by David W. Perkins, specialist in macroeconomic policy. His contact information is available to congressional Members and staff through the internal CRS website.

[8] Robert DeYoung and Tara Rice, "How Do Banks Make Money? The Fallacies of Fee Income," *Federal Reserve Bank of Chicago Economic Perspectives*, vol. 28, no. 4 (2004), p. 34.

losses. However, these safety nets expose the government (and so, ultimately, the taxpayer) to losses and distort market incentives in a way that could incentivize banks to take greater risks.[9]

To mitigate exposure and risk-taking, the government has implemented prudential regulations—rules designed to make banks safely profitable, reduce banks' risk exposure, and increase banks' ability to absorb losses without failing.

Prudential regulations are the subject of perennial debate, because while they produce certain benefits, they also impose certain costs. Preventing bank failures and mitigating financial crises and resulting economic contractions could lead to greater economic growth over the long term. In addition, prudential regulations may create greater public trust in the banking system, leading more people to deposit funds and take out bank loans. However, banks incur costs to comply with these regulations. They are required to fund themselves with a certain amount of capital (a safer but more expensive source of funding) and pay employees, accountants, and consultants, among others, to comply with the regulations. Imposing such costs reduces the amount of funds available to the bank to lend, reducing credit availability and potentially reducing economic growth for a period of time. Also, preventing banks from taking certain risks may prevent them from allocating resources to certain productive segments of the financial system and economy.

Congress has amended certain prudential regulations to promote safety and soundness while avoiding unnecessary costs. In addition, the federal bank regulators have broad authority to implement prudential regulation, and they too occasionally modify the regulations to increase realized benefits, reduce costs, or both. Often, these changes are in response to recent events that create new risks for banks. The result is that numerous policymakers continually examine particular prudential regulations and debate cases where changes may be needed.

The recent evolution of capital requirements applicable to small banks is an illustrative example of prudential regulations policymakers have debated and modified in recent years both through legislation and administrative rulemaking.

Community Bank Capital Requirements

Capital rules in effect today adhere largely to the Basel III Accords—an international standard-setting agreement among regulators from member countries[10]—and require all banks to satisfy certain minimum requirements, usually expressed as minimum ratios between certain balance sheet items.[11] Certain of the generally applicable ratios are risk-weighted—assets are assigned a percentage that their value is multiplied by to account for their riskiness. The risk weights are set so that lower-risk assets require less capital be held, and higher-risk assets require more capital. This methodology is in contrast to other relatively simple requirements involving a *leverage* ratio that treats all assets the same without risk weighting, requiring the same percent of capital to be held for each type of asset.

One criticism of risk-weighted requirements is that they involve "needless complexity" that could benefit the largest banks that have the resources to absorb the regulatory compliance cost

[9] For examples, see CRS Report R43413, *Costs of Government Interventions in Response to the Financial Crisis: A Retrospective*, by Baird Webel and Marc Labonte.

[10] For more information, see CRS Report R44573, *Overview of the Prudential Regulatory Framework for U.S. Banks: Basel III and the Dodd-Frank Act*, by Darryl E. Getter.

[11] For a more detailed examination, see CRS In Focus IF10809, *Introduction to Bank Regulation: Leverage and Capital Ratio Requirements*, by David W. Perkins.

compared with small banks that could find the costs more burdensome.[12] In response, Congress included Section 201 in EGRRCPA, which created an option for banks with less than $10 billion in assets to meet a higher leverage ratio—the *Community Bank Leverage Ratio* (CBLR)—to be exempt from having to meet the risk-based ratios.

Section 201 grants the federal bank regulatory agencies discretion over certain aspects of CBLR implementation, including setting the exact ratio. The statute mandates a range between 8% and 10%.[13] In November 2018, the regulators proposed 9%.[14] The banking industry and certain policymakers argued that the threshold was set higher than necessary, thus denying certain banks (such as those with CBLRs between 8% and 9%) an exemption from risk-weighted requirements.[15] Despite the criticism, the bank regulators finalized the rule with a 9% threshold on October 29, 2019.[16] By March 31, 2020, 1,668 qualifying banks had opted into the CBLR, while 3,013 community banks had not.[17]

When loans default in sufficient numbers—as might happen during a pandemic—banks may have to write down the value of their capital, and, all else being equal, their capital ratios will fall, possibly threatening to drop below a regulatory threshold. One possible bank response to avoid this is to shrink asset size, such as by making fewer loans. This would lead to a reduction in available credit, which could worsen or slow the recovery from the pandemic-caused recession. As a response to this possibility, Section 4012 of the CARES Act (P.L. 116-136) temporarily lowered the CBLR to 8% until the earlier of (1) the date the public health emergency ends or (2) the end of 2020, and it mandated that banks falling below the threshold during that time be given a reasonable grace period to get back above it. In the rulemaking implementing this provision, the regulators lowered the ratio to 8% through the end of 2020 in accordance with Section 4012 and chose to raise the CBLR in increments to 8.5% in 2021 before returning it to 9% on January 1, 2022.[18] Depending on how the pandemic ultimately affects banks and their capital levels, Congress may again examine whether capital requirements for banks should be modified.

CECL Accounting Standard Implementation[19]

In their accounting, banks are required to calculate a *credit loss reserve* to mitigate the overstatement of income on loans and other assets by accounting for future losses. Congress has

[12] Rachel Witkowski, "Spare Small Banks the Burden of Complex Capital Rules: FDIC Chief," *American Banker*, November 16, 2018, https://www.americanbanker.com/news/spare-small-banks-the-burden-of-complex-capital-rules-fdic-chief.

[13] P.L. 115-174, Title II, §201(b)(1).

[14] Federal Reserve, "Agencies Propose Community Bank Leverage Ratio for Qualifying Community Banking Organizations," press release, November 21, 2018, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20181121c.htm.

[15] Independent Community Bankers of America (ICBA), "ICBA Statement on Community Bank Leverage Ratio," press release, November 20, 2018, https://www.icba.org/news/news-details/2018/11/20/icba-statement-on-community-bank-leverage-ratio.

[16] OCC, Federal Reserve, FDIC, "Regulatory Capital Rule: Capital Simplification for Qualifying Community Banking Organizations," 84 *Federal Register* 61776, 2019.

[17] FDIC, *Quarterly Banking Profile: First Quarter 2020*, at 17, https://www.fdic.gov/bank/analytical/qbp/2020mar/qbp.pdf#page=1.

[18] Federal Reserve, OCC, and FDIC, "Regulatory Capital Rule: Temporary Changes to and Transition for the Community Bank Leverage Ratio Framework," 85 *Federal Register* 64004, October 9, 2020.

[19] This section was authored by Raj Gnanarajah, analyst in financial economics. His contact information is available to congressional Members and staff through the internal CRS website.

generally delegated financial accounting issues to the Securities and Exchange Commission, which has recognized the standards set by the Financial Accounting Standards Board (FASB).[20] Industry observers expect the ongoing implementation of a new credit loss reserves accounting standard—called *Current Expected Credit Loss* (CECL)—to have a near-term effect on banking industry profits.

Credit losses are often very low shortly after loan origination, subsequently rising in the early years of the loan and then tapering to a lower rate of credit loss until maturity.[21] Consequently, a firm's financial statements might not accurately reflect potential credit losses at loan inception. During the seven years leading up to the 2007-2009 financial crisis, the loan values held by the U.S. commercial banking system increased by 85%, whereas the credit loss reserves increased by only 21%.[22] The ratio of loss reserves prior to the financial crisis was as low as 1.16% in 2006 but rose when the crisis caused nonperforming loans to increase to more than 3.70% near the end of the crisis in early 2010.[23] This suggests that banks were underestimating their future losses heading into the crisis.

In response to perceived weakness in loss reserve standards, FASB promulgated CECL in June 2016. CECL requires consideration of a broader range of reasonable and supportable information in determining the expected credit loss, including current and future economic conditions. In addition, the expected lifetime losses of loans and certain other financial instruments have to be recognized at the time a loan or financial instrument is recorded. Some experts consider the change under CECL to be the most significant accounting change in the banking industry in 40 years.[24]

All public companies would have been required to issue financial statements that incorporate CECL for reporting periods beginning after December 15, 2019. In February 2019, the OCC, Federal Reserve, and FDIC issued a final rule that allows banking organizations to phase in over a three-year period the effects of CECL on their regulatory capital ratios.[25]

Banking industry professionals raised several concerns about the effects of implementing CECL. Some have estimated that reserves across the bank industry would increase by between $50 billion and $100 billion, which would be reflected in a decrease in bank profits.[26] In addition, banks are likely to incur compliance costs in estimating credit losses. Regulators gave banks the option of phasing in the increased credit reserves over three years to mitigate CECL's effects. In addition, the Federal Reserve has delayed stress tests that incorporate CECL for the largest banking organizations until 2021.[27] However, concerns over costs remain.

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[20] FASB promulgates the U.S. Generally Accepted Accounting Principles, which provides the framework for financial reporting by banks and other entities.

[21] See CRS Report R45339, *Banking: Current Expected Credit Loss (CECL)*, by Raj Gnanarajah.

[22] Hal Schroeder, "For the Investor: Benefits of the 'CECL' Model and 'Vintage' Disclosures," FASB, 2015, http://www.fasb.org/jsp/FASB/Page/SectionPage&cid=1176165963082.

[23] Federal Reserve Economic Data, Federal Reserve Bank of St. Louis, *Delinquency Rate on All Loan, All Commercial Banks*, https://fred.stlouisfed.org/series/DRALACBN.

[24] Steven Abrahams, "CECL Will Inflate Credit Booms and Worsen Downturns," *American Banker*, September 9, 2016, https://www.americanbanker.com/opinion/cecl-will-inflate-credit-booms-and-worsen-downturns.

[25] OCC, Federal Reserve, and FDIC, "Regulatory Capital Rule: Implementation and Transition of the Current Expected Credit Losses Methodology for Allowances and Related Adjustments to the Regulatory Capital Rule and Conforming Amendments to Other Regulations," 84 *Federal Register* 4222-4250, 2019.

[26] Christopher Wolfe, Michael Shepherd, and Cynthia Chan, "Fitch: New Credit-Loss Rules Manageable for US Banks," *FitchRatings*, July 20, 2016, https://www.fitchratings.com/site/pr/1009172.

[27] Federal Reserve, "Federal Reserve Board Will Maintain Current Modeling Framework for Loan Allowances in Its

Changing to CECL during the COVID-19 pandemic would require banks to incur costs and change loss reserves at a time when bank losses and reserves were likely to increase rapidly.[28] As amended, Section 4014 of the CARES Act allows banks and credit unions to delay CECL implementation until the earlier of (1) the national emergency termination date or (2) January 1, 2022 (the original end date of the earlier of the national emergency termination or the end of 2020 was extended by the Consolidated Appropriations Act, 2021 [P.L. 116-260]). Additionally, the bank regulators' final rule implementing Section 4014 allows banks to delay CECL's adoption for up to two additional years.[29]

Anti-Money-Laundering Regulation[30]

Anti-money-laundering (AML) regulation refers to efforts to prevent criminal exploitation of financial systems to conceal the location, ownership, source, nature, or control of illicit proceeds.[31] The U.S. Department of the Treasury estimates that domestic financial crime that might involve money laundering, excluding tax evasion, generates $300 billion a year.[32]

In the United States, the statutory foundation for domestic AML originated in 1970 with the Bank Secrecy Act (BSA) and its major component, the Currency and Foreign Transactions Reporting Act. Amendments to the BSA and related provisions in the 1980s and 1990s expanded AML policy tools available to combat crime, particularly drug trafficking, and prevent criminals from laundering their illicitly derived profits. Key elements to the BSA/AML legal framework include requirements for customer identification, recordkeeping, reporting, and compliance programs.

In general, when a regulator finds BSA violations or deficiencies in AML compliance programs, it may take informal or formal enforcement action, including possible civil fines. The BSA/AML policy framework also requires banks and other covered financial entities to file a range of reports with the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) when their clients engage in suspicious financial transactions, large cash transactions, or certain other transactions.[33] The accurate, timely, and complete reporting of such activity to FinCEN flags situations that may warrant further investigation for law enforcement.[34]

Whether this regulatory framework adequately hinders criminals from using the banking system to launder their criminal proceeds and does so efficiently without unduly burdening banks are

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Supervisory Stress Test Through 2021," press release, December 21, 2018, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20181221b.htm.

[28] See CRS Insight IN11500, *COVID-19 Impact on the Banking Industry: Conditions in the Second Quarter of 2020*, by David W. Perkins and Raj Gnanarajah.

[29] For example, see FDIC, "Agencies Issue Three Final Rules," press release, August 26, 2020, https://www.fdic.gov/news/press-releases/2020/pr20096.html.

[30] This section was authored by Rena S. Miller, specialist in financial economics. Her contact information is available to congressional Members and staff through the internal CRS website.

[31] For more information on AML regulation, see CRS Report R44776, *Anti-Money Laundering: An Overview for Congress*, by Rena S. Miller and Liana W. Rosen; and CRS In Focus IF11064, *Introduction to Financial Services: Anti-Money Laundering Regulation*, by Rena S. Miller and Liana W. Rosen.

[32] U.S. Department of the Treasury, *National Money Laundering Risk Assessment 2018*, December 20, 2018, p. 2, https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf.

[33] For example, a bank must generally file a Suspicious Activity Report if, among other reasons, it conducts a transaction of $5,000 or more that the bank suspects involves money laundering or other criminal activity. A bank must file a Currency Transaction Report if it conducts a cash transaction of $10,000 or more for which it has the same suspicions. See 12 C.F.R. §21.11(b).

[34] 31 C.F.R. §1010.311.

debated issues. One aspect of this debate is whether current reporting requirements are overly costly to the banking industry. Some industry observers—including officials from the OCC—believe compliance costs could be reduced without unduly weakening the ability to prevent money laundering.[35] In contrast, officials from other agencies involved in AML and law enforcement—including FinCEN and the Federal Bureau of Investigations—have stressed the importance of the information gathered under the current reporting requirements in combating money laundering.[36]

Provisions recently enacted in the National Defense Authorization Act for Fiscal Year 2021 (NDAA; P.L. 116-283) may enhance transparency of certain financial transactions. The new law requires certain *beneficial owners*—the natural persons who own or control a legal entity, such as a corporation or limited liability company—to report their identities to FinCEN.[37] Federal agencies and federal, state, and local law enforcement may access this information. Financial institutions that require the information for their *customer due diligence* (CDD) obligations under AML rules may also request the information from FinCEN. This may prove particularly useful for banks, as they have faced increased requirements to ascertain the identities of beneficial owners in certain cases following a May 2018 change to FinCEN regulation.[38] Central to FinCEN's CDD rule is a requirement for financial institutions to establish and maintain procedures to identify and verify beneficial owners of a legal entity opening a new account.[39] Once implemented, the new beneficial ownership provision in the NDAA might also make it more difficult for *shell companies*—legal entities without physical operations or assets—to launder money by concealing beneficial ownership information and facilitating anonymous financial transactions.[40]

BSA/AML and Banking Cannabis Businesses

Currently, 35 states and the District of Columbia have legalized the use of cannabis to some degree. Banks may want to provide services to cannabis businesses operating legally under state law, and those cannabis businesses may want to hold accounts at financial institutions that are federally regulated, such as banks. However, the possession, distribution, and sale of cannabis remains illegal under federal law. Thus, financial institutions are hesitant to provide services to

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[35] Comptroller of the Currency Joseph M. Otting, *Testimony Before the House Committee of Financial Services*, in U.S. Congress, House Committee on Financial Services, *Financial Industry Regulation: the Office of the Comptroller of the Currency*, 115th Cong., 2nd sess., June 13, 2018.

[36] Julian B. Carter and Peter D. Hardy, "FinCEN, OCC and FBI Offer Diverging Views on AML Reform in U.S. Senate Testimony," Ballard Spahr, December 4, 2018, https://www.moneylaunderingwatchblog.com/2018/12/fincen-occ-and-fbi-offer-diverging-views-on-aml-reform-in-u-s-senate-testimony/.

[37] P.L. 116-283, Title VIII, Subtitle F.

[38] FinCEN, "Customer Due Diligence Requirements for Financial Institutions," 81 *Federal Register* 91, May 11, 2016, pp. 29398-29458.

[39] FinCEN, "FinCEN Reminds Financial Institutions that the CDD Rule Becomes Effective Today," press release, May 11, 2018, https://www.fincen.gov/news/news-releases/fincen-reminds-financial-institutions-cdd-rule-becomes-effective-today.

[40] In recent years, policymakers have become increasingly concerned regarding potential risks posed by shell companies whose beneficial ownership is not transparent. This is due in part to a series of leaks to the media regarding the use of shell companies to facilitate criminal activity (such as "the Panama Papers") and sustained multilateral criticism of current U.S. practices by the Financial Action Task Force, an international standard-setting body. See Financial Action Task Force, *Mutual Evaluation of the United States*, December 2016, https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf.

cannabis businesses due to BSA/AML prohibitions against establishing and maintaining relationships with criminal enterprises.[41]

Cannabis banking advocates argue this situation is causing a number of undesirable outcomes. Banks are prevented from providing services to what could be a profitable market segment. In addition, cannabis businesses are in many cases forced to do business in (and hold large amounts of) cash. This could make the businesses targets for theft and robbery and make it harder for the states to collect taxes from them.[42] Some states have established a safe harbor for certain state-chartered financial institutions that provide services to companies in compliance with state law, but this is unlikely to address the issue at the federal level.[43] Certain bills in the 116th Congress—including H.R. 1595, H.R. 6800, and S. 1200—would have directed regulators not to take action against banks with cannabis customers. Opponents of cannabis banking argue that allowing banks to serve businesses that are illegal under federal law undermines the safety of the U.S. financial system.[44]

Cybersecurity[45]

Cybersecurity is a major concern of banks, other financial services providers, and federal regulators. Recent data breaches at large financial institutions and credit reporting agencies have increased concern about the privacy and security of the large amounts of consumer financial information (known increasingly as *big data*) that companies gather, use, and store. Maintaining the confidentiality, security, and integrity of physical records and electronic data held by banks is critical to sustaining trust in the banking industry.

Numerous laws cover different aspects of cybersecurity and different industries. The bank regulators use their general safety and soundness authorities to establish cybersecurity standards and issue guidance to help banks evaluate their risks and comply with cybersecurity regulations.[46] Regulators also bring enforcement actions related to banks' violations of cybersecurity protocols.

In addition, various state and federal laws have provisions related to cybersecurity of financial services, including the Dodd-Frank Act, GLBA, and the Sarbanes-Oxley Act of 2002 (P.L. 107-204).

Most comprehensively, GLBA directs financial regulators to implement disclosure requirements and security measures to safeguard private information and provides a framework for regulating data privacy and security practices in the financial services industry.[47] This framework is built

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[41] American Bankers Association (ABA), "Cannabis Banking: Bridging the Gap Between State and Federal Law," https://www.aba.com/advocacy/our-issues/cannabis.

[42] U.S. Congress, House Committee on Financial Services, *SAFE Banking Act of 2019*, report together with minority views to accompany H.R. 1595, 116th Cong., 1st sess., June 5, 2019, H.Rept. 116-104, pp. 6-9.

[43] For example, see California Assembly Bill 1525, which was signed into law September 2020. The bill can be found at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1525.

[44] U.S. Congress, House Committee on Financial Services, H.Rept. 116-104, pp. 43-44.

[45] This section was authored by Andrew P. Scott, analyst in financial economics. His contact information is available to congressional Members and staff through the internal CRS website.

[46] For example, the bank regulators, through the Federal Financial Institutions Examination Council (FFIEC), issue the FFIEC Cybersecurity Assessment Tool to help an institution identify its cybersecurity risks and its ability to address them.

[47] 15 U.S.C. §6801(a). The term *financial institution* is defined broadly in this provision and includes banks. Section 6809(3)(A) defines *financial institution* as "any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company

upon two pillars: (1) disclosure limitations on financial institutions concerning consumers' information and (2) security standards that require institutions to implement certain practices to safeguard the information from unauthorized access, use, and disclosure. One major rule for implementing this framework is known as the Safeguards Rule, which requires financial institutions to design and implement a cybersecurity program and identify and assess the risks to customer information in each relevant area of their operations.[48] Several regulators implement, supervise, and enforce GLBA provisions.

The complex and sometimes overlapping "patchwork" of state and federal laws, regulators, regulations, and guidance has raised questions over whether the regulatory standards for cybersecurity are effective and efficient and result in adequate protection against cyberattacks without imposing undue cost burdens on banks. Successful hacks of banks and other financial institutions—such as a March 2019 Capital One data breach that compromised the personal information of over 100 million consumers—highlight the importance of ensuring bank cybersecurity.[49]

One subject of debate in this area is whether data security standards should be prescriptive and government-defined or flexible and outcome-based. Some argue that a prescriptive approach can be inflexible and harm innovation, but others argue that an outcome-based approach might lead to institutions having to comply with a wide range of data standards. For instance, the Federal Trade Commission (FTC) recently proposed amendments to the Safeguards Rule and a privacy rule designed to provide more certainty to financial institutions and to better protect consumers.[50] Two commissioners dissented over the amendments, raising caution over the impact more prescriptive cybersecurity standards might have on innovation.[51]

Consumer Fairness and Access

Financial products can be complex and potentially difficult for consumers to fully understand. Consumers seeking loans or financial services could be vulnerable to deceptive or unfair practices. To reduce the occurrence of bad outcomes, laws and regulations have been put in place to protect consumers.[52] This section provides background on consumer financial protection law and the authority of the Consumer Financial Protection Bureau (CFPB) and analyzes related issues, including:

- whether disadvantaged consumers can access appropriate banking services for their needs, and

Act" (12 U.S.C. §1843(k)).

[48] 16 C.F.R. Part 314.

[49] Nicole Hong, Liz Hoffman, and AnnaMaria Andriotis, "Capital One Reports Data Breach Affecting 100 Million Customers, Applicants," *Wall Street Journal*, July 30, 2019, https://www.wsj.com/articles/capital-one-reports-data-breach-11564443355.

[50] FTC, "FTC Seeks Comment on Proposed Amendments to Safeguards and Privacy Rules," March 5, 2019, https://www.ftc.gov/news-events/press-releases/2019/03/ftc-seeks-comment-proposed-amendments-safeguards-privacy-rules.

[51] FTC, "Dissenting Statement of Commissioner Noah Joshua Phillips and Commissioner Christine S. Wilson," March 5, 2019, https://www.ftc.gov/system/files/documents/public_statements/1466705/reg_review_of_safeguards_rule_cmr_phillips_wilson_dissent.pdf.

[52] For an overview of consumer financial markets, see CRS Report R45813, *An Overview of Consumer Finance and Policy Issues*, by Cheryl R. Cooper.

- whether the Community Reinvestment Act (P.L. 95-182) as currently implemented is effectively and efficiently meeting its goal of ensuring banks provide credit to the areas in which they operate.

Background[53]

Banks are subject to *consumer compliance* regulation, which is intended to ensure that banks are in compliance with relevant consumer-protection and fair lending laws. Federal laws and regulations in this area take a variety of approaches to address different areas of concern. Certain laws provide disclosure requirements intended to ensure that consumers adequately understand the costs and other features and terms of financial products.[54] Other laws prohibit unfair, deceptive, or abusive acts and practices.[55] Fair lending laws prohibit discrimination in credit transactions based upon certain borrower characteristics, including sex, race, religion, or age, among others.[56]

The financial crisis raised concerns among policymakers that bank regulators lacked sufficient focus on consumer protection. In response, the Dodd-Frank Act established the CFPB with the single mandate to implement and enforce federal consumer financial law while ensuring consumers can access financial products and services. The CFPB has certain authorities over banks and some nonbanks and seeks to ensure that the markets for consumer financial services and products are fair, transparent, and competitive.[57]

For banks with *more than $10 billion* in assets, the CFPB is the primary regulator for consumer compliance, whereas safety and soundness regulation continues to be performed by the prudential regulator. As a regulator of larger banks, the CFPB has rulemaking, supervisory, and enforcement authorities.[58] A large bank, therefore, has different primary regulators for consumer protection and safety and soundness.

For banks with *$10 billion or less* in assets, the rulemaking, supervisory, and enforcement authorities for consumer protection are divided between the CFPB and a prudential regulator. The CFPB may issue rules that apply to smaller banks, but the prudential regulators maintain primary supervisory and enforcement authority for consumer protection. The CFPB has limited supervisory and enforcement powers over small banks.

Consumer protection and fair lending compliance continue to be important issues for banks for numerous reasons. Noncompliance can result in regulators taking enforcement actions that may involve substantial penalties. In addition, even in the absence of enforcement actions, an institution faces reputational risks if it comes to be perceived as failing to protect customers. For example, the CFPB maintains a consumer complaints database that makes consumer complaints against individual companies publicly available.[59] The recent public reaction to and enforcement

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[53] This section was authored by Cheryl R. Cooper, analyst in financial economics. Her contact information is available to congressional Members and staff through the internal CRS website.

[54] For example, see CFPB, *Laws and Regulations: Truth in Lending Act*, June 2013, http://files.consumerfinance.gov/f/201306_cfpb_laws-and-regulations_tila-combined-june-2013.pdf.

[55] 12 U.S.C. §5531.

[56] FDIC, *Compliance Examination Manual*, September 2015, https://www.fdic.gov/regulations/compliance/manual/4/iv-1.1.pdf.

[57] 12 U.S.C. §5511.

[58] For more information on the CFPB, see CRS In Focus IF10031, *Introduction to Financial Services: The Consumer Financial Protection Bureau (CFPB)*, by Cheryl R. Cooper and David H. Carpenter.

[59] The CFPB consumer complaint database is available at https://www.consumerfinance.gov/data-research/consumer-

actions pertaining to Wells Fargo's unauthorized opening of customer accounts show the importance of strong consumer protection compliance.[60]

Recently, banks and other nonbank financial institutions that provide financial products to consumers (e.g., mortgages, credit cards, and deposit accounts) have been affected by the implementation of CFPB regulations. For example, banks and other lenders have to comply with major mortgage rules such as the Ability-to-Repay and Qualified Mortgage Standards Rule (ATR/QM), which encourages lenders to gather more information on prospective borrowers in order to reduce the likelihood that a borrower would receive an inappropriate loan.[61] Compliance with this rule may have increased some banks' operational costs, which some argue could potentially lead to higher costs for consumers in certain market segments or a reduction in the availability of credit for some types of mortgages.[62] Others argue that ATR/QM protects consumers from entering into mortgages they cannot repay, potentially causing financial harm. Debates about how best to achieve the appropriate balance of consumer protection, credit access, and industry costs are unlikely to be resolved easily and thus may continue to be an area of congressional interest.

Access to Banking for Disadvantaged Groups[63]

The banking sector provides valuable financial services for households that allow them to save, make payments, and access credit. Safe and affordable financial services help households to achieve the goals of avoiding financial hardship, building assets, and improving financial security. However, many U.S. households (often those with low incomes, lack of credit histories, or bad credit histories) do not use banking services.[64] According to the FDIC's Survey of Household Use of Banking and Financial Services: 5.4% of households in the United States in 2019 were unbanked (i.e., did not have an account at an insured institution); 17.2% of households used nonbank financial transaction services (such as a money order or check cashing service); and 4.8% of households used a nonbank credit product in the past year (such as payday or auto title loans).[65]

Some households rely on alternative financial service providers and consumer credit products outside of the formal banking sector.[66] Certain observers believe that financial outcomes for these

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complaints/.

[60] Alan Kline and Bonnie McGeer, "2018 Bank Reputation Rankings: Who Stood Out, Who Stumbled," *American Banker*, July 1, 2018. For more information, see CRS In Focus IF11129, *Wells Fargo—A Timeline of Recent Consumer Protection and Corporate Governance Scandals*, by Cheryl R. Cooper and Raj Gnanarajah.

[61] CFPB, "Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)," 78 *Federal Register* 6408, January 30, 2013. For more information, see CRS In Focus IF11413, *The Qualified Mortgage (QM) Rule and the QM Patch*, by Darryl E. Getter.

[62] CFPB, *Ability-to-Repay and Qualified Mortgage Rule Assessment Report*, January 2019, https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf.

[63] This section was authored by Cheryl R. Cooper, analyst in financial economics. Her contact information is available to congressional Members and staff through the internal CRS website.

[64] For more information, see CRS In Focus IF11631, *Financial Inclusion: Access to Bank Accounts*, by Cheryl R. Cooper.

[65] Mark Kutzbach et al., *How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey*, FDIC, October 2020, pp. 1, 6, https://www.fdic.gov/analysis/household-survey/2019execsum.pdf.

In this FDIC study, alternative financial services providers include money orders, check cashing, international remittances, payday loans, refund anticipation loans, rent-to-own services, pawn shop loans, or auto title loans.

[66] For more information on financial inclusion and credit access policy issues, see CRS Report R45979, *Financial*

households would be improved if banks—which may be more likely to offer relatively inexpensive financial services—were more active in meeting this demand and more effectively competing with alternative financial products.

Many unbanked or underbanked consumers choose alternative financial payment products, such as check cashers, to access their funds quickly. These consumers might not require such alternative services if bank payment systems operated faster. Both the private sector and the government are currently working on faster payment initiatives.[67] Other policy proposals include the government directly providing accounts to retail customers (e.g., offering banking services at post offices or providing banking services online to the public through the Federal Reserve).[68]

Community Reinvestment Act[69]

The Community Reinvestment Act (CRA) was enacted in 1977 to encourage banks to meet the credit needs of the areas they serve including in low- and moderate-income (LMI) neighborhoods.[70] The federal prudential banking regulators conduct examinations to evaluate how well banks are meeting those needs by engaging in qualifying activities—such as mortgage, consumer, and business lending; community investments; and low-cost services—within an assigned *assessment area*. Based on these and other bank activities, the regulator gives a bank a performance rating, ranging from *Outstanding* to *Substantial Noncompliance*. The CRA requires regulators to consider these ratings when banks apply to merge with other banking institutions or otherwise expand into new areas.

In recent years, some banking and consumer groups have called for modifying existing regulations implementing the CRA. One critique made by banking advocates has to do with the weight that CRA examinations generally place on meeting the credit needs within a designated geographic area. When the CRA was enacted in 1977 and for years afterward, the business of banking was carried out at physical bank offices or branches. As more banking activities are increasingly conducted over the internet, some observers contend that the regulators fail to consider CRA-eligible activities that a bank may conduct outside of its designated geographic area.

Meanwhile, consumer advocates also criticize the CRA evaluations as being too lenient. They note that a very high proportion of banks—almost 99 percent of the 1,472 CRA exams conducted in 2019[71]—get a *Satisfactory* or *Outstanding* rating despite, in their view, the continued underallocation of credit to LMI and minority neighborhoods.[72]

Inclusion and Credit Access Policy Issues, by Cheryl R. Cooper.

[67] For more information, see CRS Report R45927, *U.S. Payment System Policy Issues: Faster Payments and Innovation*, by Cheryl R. Cooper, Marc Labonte, and David W. Perkins.

[68] For example, see Mehrsa Baradaran, "It's Time for Postal Banking," *Harvard Law Review Forum*, vol. 127 (February 2014), pp. 165-175; and Mehrsa Baradaran, *How the Other Half Banks: Exclusion, Exploitation, and the Threat to Democracy* (Cambridge, MA: Harvard University Press, 2015).

[69] This section was authored by Darryl E. Getter, specialist in financial economics. His contact information is available to congressional Members and staff through the internal CRS website.

[70] For more information on the CRA, see CRS Report R43661, *The Effectiveness of the Community Reinvestment Act*, by Darryl E. Getter.

[71] CRS analysis of data available at FFIEC, "Interagency CRA Rating Search," https://www.ffiec.gov/craratings/default.aspx.

[72] Bruce Mitchell and Juan Franco, *HOLC "Redlining" Maps: The Persistent Structure of Segregation and Economic Inequality*, National Community Reinvestment Coalition, March 20, 2018, https://ncrc.org/wp-content/uploads/

The federal prudential banking regulatory agencies have jointly implemented the CRA in the past with the goal of having a consistent CRA framework applied to all bank types. This changed in May 2020, when the OCC separately adopted and implemented a revised CRA framework that will apply only to the banks that it directly supervises.[73] The OCC adopted the final rule "to strengthen and modernize the CRA by clarifying and expanding the activities that qualify for CRA credit; updating where activities count for CRA credit; creating a more objective method for evaluating CRA performance; and providing for more timely and transparent CRA-related data collection, recordkeeping, and reporting."[74] The OCC generally exempted small and intermediate banks from the new general performance standards, but they may opt in.[75] The final rule became effective on October 1, 2020. However, different periods of compliance with certain sections of the rule have been allowed to reduce administrative burdens.[76]

A number of consumer and community advocacy and civil rights groups argue that expanding CRA qualifying activities and other changes will make it easier for banks to achieve good CRA ratings while directing less credit to LMI neighborhoods.[77] State bank regulators, community advocacy groups, and bank industry associations argue that three agencies implementing changes in separate processes risks having the CRA applied differently across bank types, which could create practical and legal problems for banks and regulators and contravenes the widely accepted principle that regulation should generally be consistent for all banks.[78] Bank industry associations

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dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf.

[73] Small banks are defined as having assets of $600 million or less, intermediate banks are defined as having more assets than a small bank but less than $2.5 billion in assets, and large banks are defined as having more than $2.5 billion in assets. See OCC, "OCC Finalizes Rule to Strengthen and Modernize Community Reinvestment Act Regulations," press release, May 20, 2020, https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-63.html.

[74] See OCC, "Community Reinvestment Regulations," 85 *Federal Register* 34734-34834, June 5, 2020.

[75] Under the existing framework, banks are categorized as small and intermediate small. Intermediate small banks are a subset of small banks. As of January 1, 2020 (adjusted for inflation), a small bank is defined as having less than $1.305 billion in assets as of December 31 of either of the prior two calendar years, an intermediate small bank has at least $326 million as of December 31 of both of the prior two calendar years but less than $1.305 billion as of December 31 of either of the prior two calendar years, and a large bank has $1.305 billion or more in assets. Under the OCC's revised framework, small and intermediate banks are separate non-overlapping categories. Just as the bank size thresholds are adjusted annually for inflation in the existing CRA framework, they will also be adjusted annually under the revised CRA framework.

[76] Wholesale and limited purpose banks are specialized banks with nontraditional business models. Wholesale banks provide services to larger clients, such as large corporations and other financial institutions. They generally do not provide financial services to retail clients, such as individuals and small businesses. Limited purpose banks offer a narrow product line (e.g., concentration in credit card lending). These banking firms typically apply to their primary regulators to request designation as wholesale or limited purpose banks and, for CRA examination purposes, are evaluated under strategic plan options that have been tailored for their distinctive capacities, business strategies, and expertise. Banks subject to the wholesale or limited purpose bank performance standards must comply with the following sections by January 1, 2023: (1) assessment area; (2) wholesale or limited purpose bank performance standards; (3) data collection for wholesale and limited purpose banks evaluated under the wholesale or limited purpose bank performance standards; (4) recordkeeping; and (5) reporting for banks evaluated under the general performance standards, the wholesale or limited purpose bank performance standards, or a strategic plan. Small and intermediate banks that opt in to the new performance standard framework must comply with the following sections by January 1, 2024: (1) assessment area, (2) small and intermediate bank performance standards, (3) retail domestic deposit data collection for small and intermediate banks evaluated under the small and intermediate bank performance standards, and (4) recordkeeping.

[77] Americans for Financial Reform et al., *Joint Letter: Letter Opposing OCC/FDIC Proposed Changes to Weaken the Community Reinvestment Act*, April 8, 2020, https://ourfinancialsecurity.org/2020/04/joint-letter-letter-opposing-occ-cra-proposed-changes-to-weaken-the-community-reinvestment-act/.

[78] For example, see John Ryan, "CSBS Letter: Community Investment Act Regulation," Conference of State Bank

generally express support for actions to increase the objectivity, transparency, and simplicity of the evaluation methodology. However, they took issue with aspects of the OCC's new rule, including its recordkeeping requirements and the costs of changing their compliance to a new system.[79]

The FDIC had been part of the OCC's rulemaking process for a time in the lead up to the OCC finalizing its rule.[80] However, the FDIC (unlike the OCC) has not finalized any revisions to its CRA framework to date.

Meanwhile, in September 2020, the Federal Reserve issued an advanced notice of proposed rulemaking (ANPR) proposing changes to its CRA regulations and seeking comment.[81] The comment period ended in February 2021,[82] and to date the Federal Reserve has not announced a finalized rule. The ANPR has certain similarities with the OCC's final rule, including expanding assessment areas, because the Federal Reserve stated it wished to harmonize the regulators' CRA regulatory approaches.[83] However, there remain certain differences in the approaches by the Federal Reserve and the OCC. For example, while both rulemakings feature a quantitative measure assigning a score to qualifying activity, the calculation of that score differs. Because the Federal Reserve's CRA approach is still in the formative stage, the similarities and differences between its rulemaking and the OCC's final rule could change.

COVID-19 Effects and Policy Responses

The COVID-19 pandemic has had unprecedented effects on the economy and impaired the ability of millions of businesses and individuals to make repayments on their bank loans. Furthermore, the CARES Act contains certain provisions that will have either a direct or indirect effect on banks. This section examines bank issues related to COVID-19, including:

- the risks posed to bank solvency, lending, and profitability;
- the expiration of mortgage forbearances granted pursuant to the CARES Act;
- the expiration of bank regulatory relief provisions in the CARES Act; and
- the regulatory implications of bank asset growth caused by the pandemic and policy responses to it.

Supervisers (CSBS), April 8, 2020, https://www.csbs.org/policy/statements-comments/csbs-letter-community-reinvestment-act-regulations.

[79] Bank Policy Institute, *Community Reinvestment Act Regulations*, comment letter, April 8, 2020; and American Bankers Association, *Community Reinvestment Act Regulations*, comment letter, April 8, 2020.

[80] On December 12, 2019, the FDIC along with the OCC released a joint notice of proposed rulemaking to modernize and update the CRA regulations. See OCC and FDIC, "Community Reinvestment Act Regulations," 85 *Federal Register* 1204-1265, January 9, 2020.

[81] Board of Governors of the Federal Reserve System, "Federal Reserve Issues Advance Notice of Proposed Rulemaking on Approach to Modernize Regulations that Implement the Community Reinvestment Act," press release, September 21, 2020, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200921a.htm.

[82] Federal Reserve, "Community Reinvestment Act," 85 *Federal Register* 66410, October 19, 2020.

[83] Federal Reserve Governor Lael Brainard, "Strengthening the CRA to Meet the Challenges of Our Time," speech delivered at the Urban Institute, September 21, 2020, https://www.federalreserve.gov/newsevents/speech/brainard20200921a.htm.

Background[84]

Economic downturns can threaten banks because they cause more businesses and households to miss loan repayments, reducing bank income and potentially imposing significant losses in the case of default. As discussed in the "Prudential Regulation" section, banks are subject to a variety of rules designed to make them better able avoid failure. However, if losses are sufficiently large, banks may nevertheless fail, reducing credit available to the economy and potentially destabilizing the financial system.

Certain effects of, and bank responses to, economic downturns—such as reduced income and increased loan loss reserves—occur shortly after the onset of economic deterioration. Indeed, data from recent quarters show that these have occurred.[85] Other effects—such as increased loan delinquency, incurred losses on assets, and reduced capital value—occur after a longer lag. Many individuals and businesses have resources—such as savings, unemployment insurance benefits, or lines of credit—that give them the ability to continue making loan payments for a time after the onset of recession. Then, after missed payments start to grow, banks have some time before they become distressed as a result. Borrowers might find new jobs, or business might start to pick back up after a relatively small number of missed payments. Therefore, loans go through a progression of statuses in bank records—30-89 days late, 90+ days late, and nonaccrual—before the bank writes them off as a loss.[86]

If current economic conditions persist and borrowers are not able to repay their loans, banks will have to fully recognize the losses on the loans and write down the value of capital. This scenario will likely take some time to play out, and the full effects will likely not be known until well into 2021 or later. For example, during the 2007-2009 financial crisis, the number of bank failures reached the highest level a couple of years after the height of the crisis, peaking in 2010 with 157 bank failures.[87]

Further, a number of policy responses to COVID-19, including certain provisions in the CARES Act, have affected banks. In an effort to help borrowers, the CARES Act includes provisions that grant borrowers a right to forbearance (i.e., a pause on obligations to make loan repayments until a later date) on certain mortgages, many of which are held by banks. In an effort to help banks, the law also included provisions easing certain bank regulations. While some of these provisions have expired, others were extended by the Consolidated Appropriations Act, 2021 (P.L. 116-260).

The CARES Act also created a number of programs that provided funding to individuals and businesses, and the Federal Reserve opened a number of credit facilities. Collectively, these programs disbursed trillions of dollars through the economy, much of which was deposited in bank accounts. This resulted in a corresponding increase in bank assets, which could have regulatory implications for banks crossing certain asset thresholds, though the bank regulators have taken steps to ameliorate those effects.

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[85] For example, banking industry profit in the third quarter of 2020 was $51.2 billion, a decline of nearly 11% from the third quarter of 2019, following year-over-year declines of 70% in first and second quarter 2020 income. See FDIC, *Quarterly Banking Profile: Third Quarter 2020*, https://www.fdic.gov/bank/analytical/qbp/2020sep/qbp.pdf#page=1; *Second Quarter 2020*, https://www.fdic.gov/bank/analytical/qbp/2020jun/qbp.pdf#page=1; and *First Quarter 2020*, https://www.fdic.gov/bank/analytical/qbp/2020mar/qbp.pdf#page=1.

[86] 12 C.F.R. §§621.6-621.10.

[87] FDIC, "Failed Bank List," 2020, https://www.fdic.gov/bank/individual/failed/banklist.html.

One of the initiatives, the Paycheck Protection Program (PPP), boosted bank business lending and income. The PPP provides small businesses and self-employed individuals with loans through the Small Business Administration (SBA) 7(a) program so that they may continue to pay employees and replace lost income resulting from COVID-19 disruptions.[88] Businesses and individuals apply for the loans to banks, among other types of lenders, which originate the loans and can charge origination fees. The SBA guarantees PPP loans.[89] Provided banks collect required documentation from borrowers, PPP loans expose banks to relatively little risk of loss. Accordingly, the CARES Act mandated that they be given a zero risk-weight for the purposes of determining banks' risk-based capital requirements, and the bank regulators exempted certain PPP loans from affecting any bank capital requirements.[90] The Federal Reserve has also established the PPP Liquidity Facility, which allows banks to access low-cost liquidity using their PPP loans as collateral.

Potential Effects on Bank Solvency, Lending, and Profitability[91]

It is difficult to predict exactly how conditions created by the pandemic will affect the banking industry. For example, making an estimate of how many banks will fail and in what time frame would be highly speculative. This is because the financial conditions brought about by COVID-19 have different causes than previous recessions and financial crises did, and policymakers have taken a number of novel approaches to address COVID-19 effects. Absent policy intervention, many observers project that at least some banks may become insolvent and fail, that bank lending may be hindered at least for some groups of borrowers, and that the banking industry may face a period of low profitability.

Bank Solvency

The banking industry as a whole is in a better position to withstand losses and an economic downturn now than at other times in recent history due to changes in bank regulation and behavior made in response to the 2007-2009 financial crisis. For example, the banking industry held more than $1.7 trillion in capital as of the end of 2019, an amount equal to about 9.3% of total assets, as opposed to 7.6% in 2007. This current level of capitalization is high relative to recent history and indicates that banks are generally well above regulatory minimum requirements.

Nevertheless, many banks are highly exposed to the types of loans that could incur losses. Banks held nearly $8.1 trillion worth of household and business loans at the end of 2019, which account for over 43% of their total assets. This is slightly less than the 1991-2019 average of 45% and well below the two-decade high of 51% reached in 2000. However, certain banks are much more concentrated in these loans than average. For example, at 535 banks more than 70% of their assets were household and business loans.[92] Relative to less concentrated banks, these banks tend

[88] See SBA, "Paycheck Protection Program," https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program; and CRS Report R46284, *COVID-19 Relief Assistance to Small Businesses: Issues and Policy Options*, by Robert Jay Dilger, Bruce R. Lindsay, and Sean Lowry.

[89] SBA, "Business Loan Program Temporary Changes; Paycheck Protection Program," 85 *Federal Register* 20811-20812, April 15, 2020.

[90] Federal Reserve, OCC, and FDIC, "Federal Bank Regulators Issue Interim Final Rule for Paycheck Protection Program Facility," press release, April 9, 2020, https://www.fdic.gov/news/news/press/2020/pr20050.html.

[91] This section was authored by Lida Weinstock, analyst in macroeconomic policy; Cheryl Cooper, analyst in financial economics; and David Perkins, specialist in macroeconomic policy. Their contact information is available to congressional Members and staff through the internal CRS website.

[92] CRS calculation using call report data. For more information, see CRS Report R46422, *COVID-19 and the Banking Industry: Risks and Policy Responses*, coordinated by David W. Perkins.

to be smaller and hold less capital. Thus, while the industry as a whole is well-positioned to absorb coronavirus-related losses, segments of the industry will likely come under financial pressure, and a number of banks could fail.

Economic Outlook

The pace of economic recovery following the pandemic will have a significant effect on businesses' and individuals' ability to repay their bank loans. It is difficult to predict how the economy will be affected by the virus's resurgence in the winter of 2020-2021 and how it will recover once the public health crisis has passed. The fact that the recession was not caused by a traditional financial or economic shock has led to much speculation about potential "shapes" that a recovery might take. The shape of a recession is a description of the approximate pattern economic data would make in a graph during the recession and recovery. Some of the most commonly cited include a V-, U-, and L-shaped recovery, which describe an immediate and quick recovery, a more prolonged downturn but an eventual full recovery, and a downturn in which many economic indicators do not recover, respectively. However, while the pandemic continues, the recovery might be best described as looking like a check mark (√) in reverse. Many economic indicators, such as unemployment, hit their trough levels in the second quarter and have since partially recovered but are doing so at a decelerating rate, as opposed the (near) constant rate that would be needed for a V shape.

Bank Lending

While the PPP program boosted business lending in the near term, the pandemic's effects may hamper bank lending in general in early 2021 (and potentially beyond). Banks that incur losses but avoid failure might take time to rebuild capital reserves post-COVID-19, as some banks would have to rely on future earnings and recovery of their investment portfolios. Banks can issue additional ownership equity to rebuild capital, but in times of economic distress, a successful issuance might be challenging. Thus, the process of rebuilding capital could temporarily dampen future lending.

In addition, it appears that banks are becoming more selective when making new loans.[93] According to the Federal Reserve's senior loan officer survey in July, banks tightened credit standards for all types of household lending, including mortgages, credit cards, and auto loans.[94] Therefore, consumers may have needed higher credit scores, larger down payments, or other more stringent requirements to qualify for new credit. While some creditors may be tightening standards across the board over concerns that mandatory credit reporting provisions may result in inaccurate assessments of credit risk, others argue that broader macroeconomic uncertainties may be driving this trend.[95] For example, some banks and other lenders may be reluctant to make new

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[93] Aggregate bank lending grew in the months after the onset of the pandemic as borrowers drew on existing lines of credit (to which banks were already committed) and took out PPP loans (which are guaranteed by the SBA). While the Consolidated Appropriations Act, 2021, reinstated the PPP, growth in other loan types that are not already committed to customers or guaranteed by the government may be subject to slow growth or decline.

[94] Board of Governors of the Federal Reserve System, *Senior Loan Officer Opinion Survey on Bank Lending Practices*, July 2020, https://www.federalreserve.gov/data/sloos/sloos-202007.htm.

[95] The CARES Act protections related to the credit reporting system may also impact consumers' ability to access credit in the future, possibly in positive and negative ways. Consumers can harm their credit scores when they miss consumer loan payments, and lower credit scores can impact their access to future credit. Section 4021 requires financial institutions to report to the credit bureaus that consumers are current on their credit obligations if they enter into agreements to defer, forbear, modify, make partial payments, or get any other assistance on their loan payments from a financial institution and fulfill those requirements. Although this protection allows consumers with loan forbearance agreements to protect their on-time credit histories, the provision may also lead to some unintended consequences. Financial institutions may find credit scores less predictive of whether a consumer is currently creditworthy, in part due to deferrals being treated the same as on-time payments. This situation could make it more difficult for consumers to access new credit, particularly those currently meeting their loan obligations. For more

loans given that many borrowers could still be vulnerable to potential job losses and need future forbearance, which generates costs for lenders. If consumers find it difficult to access credit markets, the resulting reduction in consumer spending could harm the economic recovery.

Bank Profitability

In addition to reductions in bank income due to missed loan payments and reduced lending, low interest rates may also hinder bank profitability. Typically, a low interest rate environment is associated with a smaller difference between long-term rates banks receive and short-term rates they pay—referred to as net interest margin—which reduces bank interest profit margin. Both in response to the COVID-19-driven recession and a change to monetary policy strategy,[96] the Board of Governors of the Federal Reserve has indicated that it will keep the federal funds rate (the overnight interbank lending rate) close to zero for the foreseeable future.[97] In addition, the difference between long-term and short-term rates dropped roughly 0.5 percentage points by April 2020 from its pre-pandemic relative peak in March 2020 for several months. Beginning in September 2020, net interest margins began increasing and, as of February 2021, are in the range of the March 2020 levels.[98] Tightening net interest margins, all else equal, would decrease profits. However, banks may hedge their interest rate risk to mitigate effects to profitability from interest rate changes.[99] The temporary boost to income created by PPP loan origination fees may not fully replace this longer-term challenge to bank profitability.

Consumer Loan Forbearance and CARES Act Expiration[100]

Due to the economic effects of the pandemic, many consumers have had trouble paying their loan obligations. *Loan forbearance* has become a common form of consumer relief.[101] Loan forbearance plans are agreements that allow borrowers to reduce or suspend payments for a time.[102] These plans do not forgive unpaid loan payments and tend to be appropriate for borrowers experiencing temporary hardship.

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information on the credit reporting industry, see CRS Report R44125, *Consumer Credit Reporting, Credit Bureaus, Credit Scoring, and Related Policy Issues*, by Cheryl R. Cooper and Darryl E. Getter.

[96] In August 2020, the Federal Reserve announced a change to its monetary policy strategy statement and that instead of targeting an inflation rate of 2%, it would target an average rate of 2%. For more information, see Board of Governors of the Federal Reserve System, "Guide to Changes in the Statement on Longer-Run Goals and Monetary Policy Strategy," https://www.federalreserve.gov/monetarypolicy/guide-to-changes-in-statement-on-longer-run-goals-monetary-policy-strategy.htm; and CRS Insight IN11499, *The Federal Reserve's Revised Monetary Policy Strategy Statement*, by Marc Labonte.

[97] Board of Governors of the Federal Reserve System, "Federal Reserve Issues FOMC Statement," press release, September 16, 2020, https://www.federalreserve.gov/newsevents/pressreleases/monetary20200916a.htm.

[98] For example, see Federal Reserve Bank of St. Louis Economic Data, "10-Year Treasury Constant Maturity Minus 3-Month Treasury Constant Maturity," https://fred.stlouisfed.org/series/T10Y3M.

[99] Hesna Genay and Rich Podjasek, "What Is the Impact of a Low Interest Rate Environment on Bank Profitability?," Federal Reserve Bank of Chicago, *Chicago Fed Letter*, no. 324 (July 2014).

[100] This section was authored by Cheryl R. Cooper, analyst in financial economics. Her contact information is available to congressional Members and staff through the internal CRS website.

[101] For more information on consumer loan forbearance during the COVID-19 pandemic, including CARES Act rights to forbearance, regulatory guidance, and impacts on consumers and financial institutions, see CRS Report R46356, *COVID-19: Consumer Loan Forbearance and Other Relief Options*, coordinated by Cheryl R. Cooper; and CRS Insight IN11359, *COVID-19: Financial Relief and Assistance Resources for Consumers*, by Maura Mullins and Jennifer Teefy.

[102] For more information, see CRS Report R46356, *COVID-19: Consumer Loan Forbearance and Other Relief*

Policy responses to the economic impacts of the COVID-19 pandemic have likely prevented many consumers from falling delinquent on their loans.[103] Specifically, the CARES Act mandated that lenders grant requested forbearance for many types of mortgages (Section 4022) and for most federal student loans (Section 3513).[104] Forbearance for federally backed mortgages can last for up to a year after being granted, and federal student loans forbearance has been administratively extended until at least September 31, 2021.[105]

In addition to this legislative response, bank regulatory agencies have also encouraged banks to offer voluntary loan forbearance and other financial relief options for affected consumers.[106] Since the COVID-19 pandemic began, many banks have offered various forms of assistance to affected consumers, which likely helped avoid sharp increases in loan delinquencies. During the second and third quarter of 2020, the percentage of delinquent loans declined in most consumer debt markets.[107] Some of this decline is due to consumers entering into loan forbearance agreements.

The CARES Act–mandated mortgage and student loan forbearance programs are still in effect, but when they expire, some consumers may fall delinquent on their loans.[108] For this reason, Congress may consider whether they should be extended at some point.[109] Promoting loan

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Options, coordinated by Cheryl R. Cooper; and CRS Insight IN11359, *COVID-19: Financial Relief and Assistance Resources for Consumers*, by Maura Mullins and Jennifer Teefy.

[103] For more information on household debt and delinquency during the COVID-19 pandemic, see CRS Report R46578, *COVID-19: Household Debt During the Pandemic*, coordinated by Cheryl R. Cooper.

[104] For a summary of CARES Act provisions aimed broadly at stabilizing the economy and helping affected households and businesses, see CRS Report R46301, *Title IV Provisions of the CARES Act (P.L. 116-136)*, coordinated by Andrew P. Scott. The CARES Act also provided fiscal relief, which likely made it easier for consumers to pay their existing loan obligations. These actions included enhanced unemployment insurance and relief checks (called Economic Impact Payments), among other things. These income transfer programs may have helped some consumers stay current on their consumer credit payments, particularly those who have lost income during the COVID-19 pandemic. For more information on the direct payments to individuals in the CARES Act, see CRS Insight IN11282, *COVID-19 and Direct Payments to Individuals: Summary of the 2020 Recovery Rebates/Economic Impact Payments in the CARES Act (P.L. 116-136)*, by Margot L. Crandall-Hollick. For more information on unemployment insurance during the COVID-19 pandemic, see CRS Report R45478, *Unemployment Insurance: Legislative Issues in the 116th Congress*, by Julie M. Whittaker and Katelin P. Isaacs.

[105] White House, “"Fact Sheet: President-Elect Biden’s Day One Executive Actions Deliver Relief for Families Across America Amid Converging Crises,” press release, January 20, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-president-elect-bidens-day-one-executive-actions-deliver-relief-for-families-across-america-amid-converging-crises/.

For more information on Title IV of the CARES Act, which contains a number of provisions aimed broadly at stabilizing the economy and helping affected households and businesses, see CRS Report R46301, *Title IV Provisions of the CARES Act (P.L. 116-136)*, coordinated by Andrew P. Scott. For more information about federal student loan debt relief in the context of COVID-19, see CRS Report R46314, *Federal Student Loan Debt Relief in the Context of COVID-19*, by Alexandra Hegji.

[106] The CARES Act establishes consumer rights to be granted forbearance for many types of mortgages and federal student loans but not for other types of consumer loan obligations, such as auto loans, credit cards, private student loans, and bank-owned mortgages. In these cases, financial institutions have discretion about when and how to offer loan forbearance or other relief options to consumers. Financial regulatory agencies have updated their guidance to help financial firms support consumer needs during this time. Regulatory guidance does not force financial institutions to take any particular action for consumers (such as offering loan forbearance), but it can encourage them to offer various forms of support.

[107] Federal Reserve Bank of New York, Center for Microeconomic Data, “Household Debt and Credit (Based on New York Fed Consumer Credit Panel),” Q2 2020, https://www.newyorkfed.org/microeconomics/hhdc/background.html.

[108] The expiration of supplemental unemployment insurance payments could also result in more consumers eventually being unable to stay current on their loans.

[109] In the 116th Congress, the Heroes Act (first version: H.R. 6800; second version: H.R. 925), both of which passed in

forbearance is generally viewed as a good temporary solution for consumers having trouble meeting their loan obligations. However, the economic impacts of the COVID-19 pandemic have persisted for a longer period of time than was originally envisioned by certain forecasters and may continue for some time. If that is the case, loan forbearance may be only delaying consumers from becoming delinquent and defaulting on their loans rather than preventing this outcome. If so, consumers may not be able to avoid the serious consequences of loan default, such as debt collection, foreclosure, car repossession, or wage garnishment.

For banks, as the economic impacts of the COVID-19 pandemic continue, they may find that voluntarily extending loan forbearance becomes a less viable option. Questions exist about whether deferrals will become current or whether they will eventually need to be charged off. Large numbers of missed consumer loan payments—due to forbearance or delinquency—could have significant negative consequences for financial institutions and the financial system that affects the future availability of credit.[110] It is unclear, however, if the share of household debt at risk of default may be enough to pose systemic risk to the financial system.[111]

CARES Act Regulatory Relief Provisions[112]

Congress included four sections in the CARES Act—4011, 4012, 4013, and 4014—that temporarily relax some of the regulations banks face. Section 4011 granted the OCC broad authority to exempt loans that would otherwise cause national banks to exceed limits on exposure to a single borrower when it is "in the public interest." As discussed in "Community Bank Capital Requirements" above, Section 4012 lowered the CBLR to 8% and gave banks that fall below that level a grace period to come back into compliance with the CBLR. Section 4013 allows banks to suspend certain accounting requirements for recognizing potential COVID-related losses from any *trouble debt restructuring*—a concession by a lender to a troubled borrower that it would not generally consider under normal circumstances. As discussed in "CECL Accounting Standard Implementation" above, Section 4014 allows banks and credit unions to delay CECL implementation.

As enacted, Congress set these authorities and mandates to terminate on the earlier of (1) the termination date (or in the case of Section 4013, 60 days after the termination date) of the COVID-19 national emergency declared by the President on March 13, 2020, under the National Emergencies Act (P.L. 94-412) or (2) the end of 2020. However, the Consolidation Appropriations Act, 2021, extended Sections 4013 and 4014 to expire on the earlier of the

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the House, would have expanded consumer rights to loan forbearance and other payment relief during the COVID-19 pandemic. For more information, see CRS Insight IN11405, *Heroes Act (H.R. 6800/H.R. 925): Selected Consumer Loan Provisions*, by Cheryl R. Cooper.

[110] For more information on banks' exposure to consumer loan defaults during the COVID-19 pandemic, see CRS Insight IN11336, *Bank Exposure to COVID-19 Risks: Mortgages and Consumer Loans*, by David W. Perkins and Raj Gnanarajah. For more information on banking developments during Q2 2020, see CRS Insight IN11500, *COVID-19 Impact on the Banking Industry: Conditions in the Second Quarter of 2020*, by David W. Perkins and Raj Gnanarajah. For a broader overview of banking industry risks and policy responses during the COVID-19 pandemic, see CRS Report R46422, *COVID-19 and the Banking Industry: Risks and Policy Responses*, coordinated by David W. Perkins.

[111] A Wells Fargo report estimates that approximately 6% of household debt outstanding may be at risk. See Jay Bryson, Tim Quinlan, and Shannon Seery, *Household Debt at Risk Amid Job Losses*, Wells Fargo Securities, August 26, 2020, https://www.wellsfargo.com/com/insights/economics/special-reports/.

[112] This section was authored by David W. Perkins, specialist in macroeconomic policy. His contact information is available to congressional Members and staff through the internal CRS website.

termination date of the national emergency or the end of 2021. Sections 4011 and 4012 were not extended and expired on December 31, 2020.

Given that banks typically experience and fully realize the effects of economic downturns after a lagged time period, it is possible that pandemic-related stress on the banking industry is yet to come. Thus, Congress may consider whether any or all of the CARES Act bank relief provisions should be further extended or, in the case of expired provisions, reinstated.

Regulatory Implications of Recent Asset Growth[113]

Challenges Facing Banks Due to Recent Asset Growth

As the pandemic and the congressional response to it unfolded, deposits at banks increased rapidly. Market uncertainty likely resulted in people and businesses moving their funds into the relative safety of bank accounts. Also, the PPP made loans to businesses, and other programs sent stimulus checks to individuals and supplemental unemployment insurance payments to the unemployed. Most people and businesses deposited the disbursed funds in their bank accounts.[114] Although bank lending has grown during the pandemic—largely as a result of their participation in the PPP and drawn-down credit lines—banks did not turn all the new deposits into loans. This was because either (1) they were wary of making many new loans during an unprecedented economic contraction, (2) there was insufficient demand for that many new loans, (3) there are logistical considerations to underwriting so many new loans, or (4) some combination of these factors. Instead, banks held a portion of the new funds in the safe assets of their Federal Reserve account balances and U.S. Treasuries.

This rapid expansion of bank balance sheets has a number of regulatory implications. Banks become subject to additional regulation when they cross certain asset size thresholds. For example, if a $9.9 billion bank's participation in the PPP program caused its assets to grow to over $10 billion, the CFPB would generally become its primary supervisor for consumer compliance, among other requirements. In addition, capital requirements are based on the amount of assets a bank holds, and leverage ratio requirements—in which all assets are treated equally regardless of how risky they are—may be particularly problematic. While in risk-weighted capital requirements, Federal Reserve account reserves and Treasuries are assigned a 0% weight—and thus do not require banks to hold capital against them—leverage ratios do not weight the assets and so require capital be held against the safe assets. Finally, the fees (called *assessments*) that all banks pay to the FDIC and that national banks pay to the OCC are determined by formulas that include assets as a factor.

Thus, banks that participated in the PPP or otherwise have a temporary increase in assets during the pandemic could—absent congressional or regulator action—incur additional regulatory costs and need to raise more capital quickly to maintain their capital ratios. One possible response banks may take would be to slow asset growth or even reduce assets going forward, possibly by making fewer new loans. Another possible bank response would be to stop accepting new deposits. Either course could potentially be detrimental to the economy and its recovery from the pandemic.

[113] This section was authored by David W. Perkins, specialist in macroeconomic policy. His contact information is available to congressional Members and staff through the internal CRS website.

[114] Hugh Son, "U.S. Banks Are 'Swimming in Money' as Deposits Increase by $2 Trillion Amid the Coronavirus," CNBC, June 21, 2020, https://www.cnbc.com/2020/06/21/banks-have-grown-by-2-trillion-in-deposits-since-coronavirus-first-hit.html.

Policy Responses Done Under Existing Regulator Authorities

To address the issue of banks temporarily crossing regulatory asset thresholds, the Federal Reserve, OCC, and FDIC issued an interim final rule in December 2020 under which the assets a bank held as of December 31, 2019, is to be set as the bank's asset size for the purposes of numerous regulatory thresholds provided that asset size was less than $10 billion. This rule expires on January 1, 2022.[115] Certain regulatory thresholds were not included in this rule, including the CFPB supervisory authority for consumer compliance for banks with more than $10 billion in assets. Whether the omissions were because the regulators felt they did not have the statutory authority to make changes to certain thresholds, or did not want to, was not specified in the rulemaking. In either case, if Congress determined a December 31, 2019, asset measurement should be more widely applied, it could mandate that in legislation.

To address the effects PPP participation would have on bank capital ratios, Section 1102 of the CARES Act mandated that PPP loans be given a 0% risk-weight for the purposes of determining banks' risk-based capital requirements, meaning banks would not have to hold additional capital to maintain their risk-weighted ratios when holding PPP loans. In addition, the bank regulators' PPP rule exempted PPP loans pledged as collateral to the Federal Reserve PPP Lending Facility from all risk-weighted and leverage ratios in capital rules.[116]

To negate the effect PPP participation could have on bank assessments, the FDIC also exempted PPP loans from banks' assessment schedules,[117] and the OCC allowed national banks to choose their December 31, 2019, total asset amounts as the basis for their mid-2020 assessments.[118]

Potential Responses Needing Additional Regulator Authority from Congress

Bank regulators may need additional authority from Congress to address the regulatory implications of COVID-19 asset growth for other purposes, however. For example, under Section 171 of the Dodd-Frank Act (sometimes referred to as the "Collins Amendment"), bank holding companies (BHCs) are required to meet the same risk-weighted and leverage capital ratios that depositories must meet, and those requirements cannot be less than they were at the enactment date of Dodd-Frank.[119]

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[115] Federal Reserve, OCC, and FDIC, "Temporary Asset Thresholds," 85 *Federal Register* 77345-77349, December 2, 2020.

[116] The PPP Lending Facility provides credit to financial institutions making loans under the PPP. Because banks are not required to hold capital against these loans, this facility increases lending capacity for banks facing high demand to originate these loans. See Federal Reserve, OCC, and FDIC, "Federal Bank Regulators Issue Interim Final Rule for Paycheck Protection Program Facility," press release, April 9, 2020, https://www.fdic.gov/news/news/press/2020/pr20050.html.

[117] FDIC, "Final Rule Mitigating the Deposit Insurance Assessment Effect of Participation in the Paycheck Protection Program (PPP), the PPP Liquidity Facility, and the Money Market Mutual Fund Liquidity Facility," June 22, 2020, https://www.fdic.gov/news/financial-institution-letters/2020/fil20063.html.

[118] OCC, "Office of the Comptroller of the Currency Fees and Assessments: Amended Interim Calendar Year 2020 Fees and Assessments Structure," August 7, 2020, https://www.occ.treas.gov/news-issuances/bulletins/2020/bulletin-2020-73.html.

[119] 12 U.S.C. §5371.

This section examines the leverage ratio facing all BHCs subject to Section 171 of Dodd-Frank that the Federal Reserve has said requires congressional action to amend. The bank regulators did use existing authority to make temporary adjustments to the *supplementary leverage ratio* applicable the largest bank organizations at the depository subsidiary level. Those adjustments are set to expire on March 31, 2021, though the Federal Reserve is considering extending them. See Federal Reserve, "Regulators Temporarily Change the Supplementary Leverage Ratio to Increase

According to Vice Chair of the Federal Reserve Randal Quarles, that leverage ratio requirement presents a problem under the conditions brought about by the pandemic.[120] Although risk-weights on Federal Reserve reserve account balances and Treasuries are set at 0% and thus do not require banks to hold capital against them, leverage ratios treat all assets the same. As a result, banks must hold capital against even these safe assets, and as banks' reserve account balances grow, all else equal, their leverage ratios fall. Due at least in part to these concerns, Quarles expressed in a letter to then-Senate Banking Committee Chairman Mike Crapo that the Federal Reserve may want to temporarily provide banks with additional flexibility in meeting leverage ratio requirements but that a legislative modification to the Collins Amendment was needed to do so.[121] Certain observers may argue for the importance of having a strong leverage ratio requirement to complement the risk-weighted ratios and that the purpose of the leverage ratio is to measure the amount of bank capital against assets regardless of risk. In their view, exempting safe assets undermines the usefulness of the leverage ratio requirement.[122]

Community Banks[123]

Although some banks hold a very large amount of assets, are complex, and operate on a national or international scale, the vast majority of U.S. banks are relatively small, have simple business models, and operate within a local area. This section provides background on these simpler banks—often called *community banks*—and analyzes issues related to the long-term decline in the number of community banks.

Background

Although there is no official definition of a *community bank*, policymakers and the public generally recognize that the vast majority of U.S. banks differ substantially from a relatively small number of very large and complex banking organizations in a number of ways. Community banks tend to:

- hold a relatively small amount of assets (although asset size alone need not be a determining factor);

Banking Organizations' Ability to Support Credit to Households and Businesses in Light of the Coronavirus Response," press release, May 15, 2020, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200515a.htm; and Hannah Lang, "Fed Nears Decision on Continued Easing of Bank Capital Rule," *American Banker*, February 23, 2021.

[120] Letter from Federal Reserve Vice Chair for Supervision Randel Quarles to Senator Mike Crapo, April 22, 2020, https://www.banking.senate.gov/imo/media/doc/Fed%20Response%20to%20Crapo%204.8.20%20Letter.pdf.

[121] Letter from Quarles to Senator Crapo.

During consideration of a coronavirus relief package in August 2020, Senator Crapo introduced S.Amdt. 2542 to S.Amdt. 2499 to S. 178. The amendment would have allowed bank regulators to "make such temporary adjustments to the method of calculating the generally applicable leverage capital requirements … as the appropriate Federal banking agency determines necessary to address or avoid a severe economic stress situation." Any adjustments made under this authority would have lasted no longer than 12 months. See U.S. Senate, *Congressional Record*, daily edition (August 4, 2020), pp. S4856-S4857. Neither the amendment nor the final bill were ultimately passed by the Senate.

[122] Former Federal Reserve Governor Daniel K. Tarullo, "Departing Thoughts," speech at the Woodrow Wilson School, Princeton University, April 4, 2017, pp. 11-13, https://www.federalreserve.gov/newsevents/speech/files/tarullo20170404a.pdf.

[123] This section was authored by David W. Perkins, specialist in macroeconomic policy. His contact information is available to congressional Members and staff through the internal CRS website.

- be more concentrated in core bank businesses of making loans and taking deposits and less involved in other, more complex activities;
- operate within a smaller geographic area; and
- be more likely to practice *relationship lending* wherein loan officers and other bank employees have longer standing and more personal relationships with borrowers.

These characteristics may mean community banks serve as particularly important credit sources for local communities and underserved groups with which large banks may have little familiarity.[124] In addition, relative to large banks, community banks generally have fewer employees and fewer resources to dedicate to regulatory compliance and individually pose less of a systemic risk to the broader financial system.[125]

Community banks receive special regulatory consideration to minimize their regulatory burden. For example, many regulations—including a number of regulations implemented pursuant to the Dodd-Frank Act—include exemptions for community banks or are otherwise tailored to reduce compliance costs for community banks.[126] Title I and Title II of EGRRCPA provided new exemptions to community banks and raised the asset thresholds for existing exemptions.[127] In addition, bank regulators are required to consider the effects of rules on community banks during the rulemaking process pursuant to provisions in the Regulatory Flexibility Act (P.L. 96-354)[128] and the Riegle Community Development and Regulatory Improvement Act (P.L. 103-325).[129] Supervision is also structured to pose less of a burden on small banks than larger banks, such as by requiring less-frequent bank examinations for certain small banks and less intensive reporting requirements.[130] Advocates for further regulatory relief often assert that the tailoring of regulations currently in place does not adequately balance the benefits and costs of the regulations when applied to community banks.[131]

Policymakers continue to debate questions over the appropriate level of tailoring: Where should the lines between community banks and non-community banks be drawn? Should exemption thresholds be set high so that regulations apply only to the very largest, most complex banks? Should thresholds be set relatively low so that only very small banks are exempt?[132] Should more or fewer regulations feature size-based exemptions? At what point does a bank cease to have the

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[124] FDIC, *FDIC Community Banking Study*, December 2012, https://www.fdic.gov/regulations/resources/cbi/report/cbi-full.pdf.

[125] Drew Dahl, Andrew Meyer, and Michelle Neely, "Scale Matters: Community Banks and Compliance Costs," Federal Reserve Bank of St. Louis, July 2016, https://www.stlouisfed.org/~/media/Publications/Regional-Economist/2016/July/scale_matters.pdf.

[126] For more information, see CRS Report R43999, *An Analysis of the Regulatory Burden on Small Banks*, by Marc Labonte.

[127] For examples of threshold changes, see Appendix A of CRS Report R45073, *Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174) and Selected Policy Issues*, coordinated by David W. Perkins.

[128] 5 U.S.C. §§601-612. Neither *significant* nor *substantial* in this context is defined in the Regulatory Flexibility Act.

[129] 12 U.S.C. §4802(a).

[130] For example, see Federal Reserve System, "Inspection Frequency and Scope Requirements for Bank Holding Companies and Savings and Loan Holding Companies with Total Consolidated Assets of $10 Billion or Less," December 17, 2013, http://www.federalreserve.gov/bankinforeg/srletters/sr1321.htm.

[131] See CRS Report R43999, *An Analysis of the Regulatory Burden on Small Banks*, by Marc Labonte.

[132] In an interview with *American Banker*, Sheila Bair, former chairman of the FDIC, suggested a $10 billion threshold for broad exemptions and tailoring. See Rob Blackwell, "The Easy Legislative Fix That Could Save Community Banks," *American Banker*, February 23, 2015.

characteristics associated with community banks? Congress often faces such questions when issues related to community banks arise.

Reduction in Community Banks

In recent decades, the number of community banks (under almost any common definition of that term) and their collective share of banking industry assets have declined. Overall, the number of FDIC-insured institutions fell from a peak of 18,083 in 1986 to 5,033 as of September 30, 2020. The number of institutions with less than $1 billion in assets fell from 17,514 to 4,116 during that time.[133] The share of industry assets held by those banks fell from 37% to 5%. Meanwhile, the number of banks with more than $10 billion in assets rose from 38 to 151, and the share of total banking industry assets held by those banks increased from 28% to 85%.[134]

The decrease in the number of community banks occurred mainly through three methods: mergers, failures, and lack of new banks. Most of the decline in the number of institutions in the past 30 years was due to mergers, which averaged more than 400 a year from 1990 to 2016. Failures were minimal from 1999 to 2007 but played a larger role in the decline during the late 1980s and following the 2007-2009 financial crisis and subsequent recession, when 507 banks failed between 2008 and 2014. As economic conditions improved prior to the onset of the COVID-19 pandemic, failures declined, averaging 4.5 per year between 2015 and 2020.[135] In recent years, new bank formation, as measured by the number of *new reporters*—new chartered institutions providing information to the FDIC for the first time—has been small. For example, in the 1990s, an average of 130 new banks reported data to the FDIC per year. In 2019, 13 new banks reported data to the FDIC.[136]

Experts have cited several possible causes for this industry consolidation. Some observers argue the decline indicates that the regulatory burden on community banks is too onerous, driving smaller banks to merge to create or join larger institutions.[137] Others point out that mergers—the largest factor in consolidation—could occur for a variety of reasons. For example, a bank that is struggling financially may look to merge with a stronger bank to stay in business. Alternatively, a community bank that has been outperforming its peers may be bought by a larger bank that wants to benefit from its success.

In addition, other fundamental changes in the banking system could be driving consolidation.[138] Through much of the 20th century, federal and state laws restricted banks' ability to open new

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[133] These statistics do not account for inflation, which plays a role in growing bank asset sizes. This report focuses on other factors—such as regulatory changes and economies of scale—that may be driving consolidation.

[134] FDIC, "Quarterly Banking Profile Time Series Spreadsheets," https://www.fdic.gov/bank/analytical/qbp/.

[135] Bank failures decreased from a peak of 157 in 2010 to zero in 2018. FDIC, "Bank Failures in Brief," January 23, 2019, https://www.fdic.gov/bank/historical/bank/.

[136] FDIC, "Statistics at a Glance, FDIC Historical Trends," https://www.fdic.gov/bank/statistical/stats/.

[137] Hailey Ballew, Michael Iselin, and Allison Nicoletti, "Regulatory Asset Thresholds and Acquisition Activity in the Banking Industry," 2017 Community Banking in the 21st Century Research and Policy Conference, October 5, 2017, https://www.communitybanking.org/~/media/files/communitybanking/2017/session2_paper3_nicoletti.pdf.

[138] The head of a 2007 interagency study on regulatory burden stated that "it is difficult to accurately measure the impact regulatory burden has played in industry consolidation." FFIEC, *Joint Report to Congress: EGRPRA*, July 31, 2007, p. 3, http://egrpra.ffiec.gov/docs/egrpra-joint-report.pdf. A 2014 study looked at the effect of regulatory burden on new charters and found that at least 75% of the decline could be attributed to macroeconomic conditions. See Robert M. Adams and Jacob P. Gramlich, *Where Are All the New Banks? The Role of Regulatory Burden in New Charter Creation*, Federal Reserve Board, December 16, 2014, http://www.federalreserve.gov/econresdata/feds/2014/files/2014113pap.pdf.

branches and bank across state lines. Thus, many more banks were needed to serve every community. Branching and banking across state lines was not substantially deregulated at the federal level until 1997 through the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (P.L. 103-328).[139] When these restrictions were relaxed, it became easier for community banks to consolidate or for mid-sized and large banks to spread operations to other markets. In addition, there may be economies of scale not only in compliance but in the business of banking in general. Furthermore, the economies of scale may be growing over time, which would also drive industry consolidation. For example, information technology has become more important in banking (e.g., cybersecurity and mobile banking), and certain information technology systems may be subject to economies of scale.[140] In addition, general macroeconomic conditions, including periods of slow growth and an extraordinarily long period of low interest rates, may make it less appealing for new firms to enter the banking market.

Large Banks and "Too Big to Fail"[141]

Along with the thousands of relatively small banks operating in the United States, there are a handful of banks with hundreds of billions or even trillions of dollars of assets. The 2007-2009 financial crisis highlighted the problem of "too big to fail" (TBTF) financial institutions—the concept that the failure of a large financial firm could trigger financial instability, which in several cases prompted extraordinary federal assistance to prevent the failure of certain institutions.[142] This section examines issues related to enhanced prudential regulation and the recent changes to it.

Background

Some BHCs have hundreds of billions or trillions of dollars in assets and are deeply interconnected with other financial institutions.[143] Several market forces likely drive banks and other financial institutions to grow in size and complexity, thereby potentially increasing efficiency and improving financial and economic outcomes. For example, marginal costs can be reduced through economies of scale, risk can be diversified by spreading exposures over multiple business lines and geographic markets, and a greater array of financial products could be offered to customers, allowing a bank to potentially attract new customers or strengthen relationships with existing ones.[144]

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[139] For more on the law's effect on consolidation, see U.S. Government Accountability Office, *Community Banks and Credit Unions: Impact of the Dodd-Frank Act Depends Largely on Future Rule Makings*, GAO-12-881, September 2012, http://www.gao.gov/assets/650/648210.pdf.

[140] The presence of economies of scale in banking has not been proved and is the subject of extensive research. See, for example, FDIC, *FDIC Community Banking Study*, pp. 5-22.

[141] This section was authored by Marc Labonte, specialist in macroeconomic policy. His contact information is available to congressional Members and staff through the internal CRS website.

[142] Some of the financial institutions that failed or were "bailed out" during the crisis were not banks. However, nonbank issues are beyond the scope of this report. For more information about broader TBTF issues, see CRS Report R42150, *Systemically Important or "Too Big to Fail" Financial Institutions*, by Marc Labonte.

[143] A BHC is a parent company that owns at least one subsidiary depository institution and may own many other financial companies of different types, including broker-dealers, asset managers, and insurance companies. All the largest U.S. bank organizations are structured as BHCs or, in a few cases, thrift holding companies, and so institutions with this type of corporate structure are the subject of this section.

[144] Ben S. Bernanke, "Ending 'Too Big To Fail': What's the Right Approach?," Brookings Institution, May 13, 2016, https://www.brookings.edu/blog/ben-bernanke/2016/05/13/ending-too-big-to-fail-whats-the-right-approach/.

A bank may be so large and important to the financial system that its leadership and market participants may believe that the government would feel compelled to save the bank from failure, because allowing it to fail would be costly to the economy and society. An institution of this size and complexity is said to be TBTF. This creates *moral hazard*—the firm's creditors and counterparties have less incentive to monitor its riskiness because they are shielded from the negative consequences of those risks. As a result, TBTF institutions may have incentives to be excessively risky, gain unfair advantages in the market for funding, and expose taxpayers to losses.[145]

Many assert that the worsening of the financial crisis in fall 2008 was a demonstration of TBTF-related problems.[146] Large institutions had taken on risks that resulted in large losses, causing the institutions to come under threat of failure. In some cases, the U.S. government intervened to stabilize the financial system and individual institutions. In response, the Dodd-Frank Act attempted to end TBTF through (1) a new regulatory regime to reduce the likelihood that large banks would fail, (2) a new resolution regime to make it easier to safely wind down large BHCs that are at risk of failing, and (3) new restrictions on regulators' emergency authorities to provide "bailouts" to failing large banks.[147] In addition, the Federal Reserve imposed additional capital requirements on the largest banks that largely aligned with proposed standards set out by the Basel III Accords, with some exceptions.

The Federal Reserve administers the new regulatory regime, known as *enhanced prudential regulation*, in which large banks are subject to more stringent safety and soundness standards than other banks. They must comply with higher capital and liquidity requirements, undergo stress tests, produce living wills and capital plans, and comply with counterparty limits and risk management requirements. The thresholds at which banks become subject to additional requirements have recently been subject to legislative and regulator-initiated changes.

Dodd-Frank Enhanced Prudential Regulation Thresholds

The Dodd-Frank Act initially applied enhanced prudential regulation requirements to all BHCs with more than $50 billion in assets, although more stringent standards were limited to banks with more than $250 billion in assets or $10 billion in foreign exposure, and the most stringent standards were limited to U.S. globally systemically important banks (G-SIBs), the eight most complex U.S. banks.[148]

Subsequent to the enactment of Dodd-Frank, critics of the $50 billion asset threshold argued that many banks above that size are not systemically important and that Congress should raise the threshold. In particular, critics distinguished between *regional banks* (which tend to be at the lower end of the asset range and, some claim, have a traditional banking business model

[145] William C. Dudley, "Solving the Too Big to Fail Problem," remarks at the Clearing House's Second Annual Business Meeting and Conference, November 15, 2012, https://www.newyorkfed.org/newsevents/speeches/2012/dud121115.

[146] Neel Kashkari, president of the Federal Reserve Bank of Minneapolis, "Lessons from the Crisis: Ending Too Big to Fail," speech at the Brookings Institute, February 16, 2016, https://www.minneapolisfed.org/speeches/2016/lessons-from-the-crisis-ending-too-big-to-fail.

[147] For more information, see CRS Report R42150, *Systemically Important or "Too Big to Fail" Financial Institutions*, by Marc Labonte.

[148] Currently, the U.S. G-SIBs are JP Morgan Chase, Bank of America, Wells Fargo, Citigroup, Goldman Sachs, Morgan Stanley, Bank of New York Mellon, and State Street. For the full list of all G-SIBs, see http://www.fsb.org/wp-content/uploads/P161118-1.pdf.

comparable to community banks) and the largest, most complex organizations.[149] Opponents of raising the threshold disputed the importance of this distinction, arguing that some regional banks have large off-balance-sheet exposures and are involved in sophisticated activities, such as being swap dealers.[150]

In response to concerns that the enhanced prudential regulation threshold was set too low, Section 401 of the EGRRCA exempted banks with between $50 billion and $100 billion in assets from enhanced prudential regulation and gave the Federal Reserve discretion over whether and which enhanced prudential regulations to apply to banks with between $100 billion and $250 billion in assets. The Federal Reserve rule implementing the EGRRCPA changes created a tiered system with four categories of banks based on size and complexity and imposed increasingly stringent requirements on each category.[151] Category I is the most stringent for U.S. banks and currently includes the eight G-SIBs, Category II includes one bank, Category III includes four banks, and Category IV is the least stringent and includes 12 banks.[152] Because of this and other recent regulatory changes, banks in all categories now face reduced regulatory requirements.[153]

Proponents of the changes assert they provide necessary and targeted regulatory relief. Opponents argue they needlessly pare back important Dodd-Frank protections to the benefit of large and profitable banks. The 117th Congress may consider whether the changes made pursuant to Section 401 of the EGRRCPA, including the discretionary aspects of the Federal Reserve's implementation, struck the right balance between these concerns.

"Fintech" in Banking

Advances in digital technology—such as faster and more expansive data collection, storage, and processing and the proliferation of internet access and mobile technology—have made it possible to perform financial activities and deliver financial services through innovative methods.[154] This development affects banks in a number of ways. This section examines policy issued raised by fintech in banking, including:

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[149] See, for example, Deron Smithy, Executive Vice President and Treasurer, Regions Financial Corporation, U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Examining the Regulatory Regime for Regional Banks*, 114th Cong., 1st sess., March 24, 2015, https://www.govinfo.gov/content/pkg/CHRG-114shrg94375/pdf/CHRG-114shrg94375.pdf.

For empirical evidence on how systemic importance varies across large banks, see Meraj Allahrakha, Paul Glasserman, and H. Peyton Young, *Systemic Importance Indicators for 33 U.S. Bank Holding Companies: An Overview of Recent Data*, Office of Financial Research, February 2015, https://www.financialresearch.gov/briefs/files/2015-02-12-systemic-importance-indicators-for-us-bank-holding-companies.pdf.

[150] See, for example, Simon Johnson, Massachusetts Institute of Technology, U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Examining the Regulatory Regime for Regional Banks*, 114th Cong., 1st sess., March 24, 2015, https://www.govinfo.gov/content/pkg/CHRG-114shrg94375/pdf/CHRG-114shrg94375.pdf.

[151] Federal Reserve, "Federal Reserve Board Finalizes Rules That Tailor Its Regulations for Domestic and Foreign Banks to More Closely Match Their Risk Profiles," press release, October 10, 2019, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20191010a.htm.

[152] In addition, the U.S. operations of several foreign banks face some of these requirements. Federal Reserve, "Federal Reserve Board Finalizes Rules That Tailor Its Regulations for Domestic and Foreign Banks to More Closely Match Their Risk Profiles."

[153] For more information, see CRS Report R45073, *Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174) and Selected Policy Issues*, coordinated by David W. Perkins.

[154] For more information on fintech, see CRS Report R46332, *Fintech: Overview of Innovative Financial Technology and Selected Policy Issues*, coordinated by David W. Perkins.

- whether the OCC should grant national special purpose bank charters to fintech companies that do not take FDIC-insured deposits;
- whether fintech company ownership of industrial loan companies—a type of state-chartered, FDIC-insured bank—without being supervised by the Federal Reserve as a BHC should be allowable and on what terms;
- whether the federal preemption of certain state lending laws, such as interest rate limits, should extend to loans that banks originate for fintech lenders; and
- whether the regulation of bank technology service providers is appropriately calibrated.

Background[155]

Many innovative financial technologies can perform activities traditionally associated with banking, such as lending and payment processing. Innovative technology has the potential to replace traditional processes that are outdated or inefficient. For example, automated, algorithmic loan underwriting may be faster and more accurate at risk assessment than human loan officers are. In addition, certain digital, online platforms used to process payments could be faster and less costly to maintain than the existing physical systems and infrastructures. Cost savings from removing inefficiencies may lead to reduced prices, making certain services affordable to new customers. Some customers who previously did not have access to services—due to such things as the lack of information about creditworthiness or geographic remoteness—could also potentially gain access. Increased accessibility may be especially beneficial to traditionally underserved groups, such as low-income, minority, and rural populations.[156]

Fintech in banking could also create or increase risks. Many fintech products have only a brief history of operation, so it can be difficult to predict outcomes and assess risk. Certain technologies may ultimately not function as efficiently and accurately as intended. This could result in unexpected losses or noncompliance with consumer protection and fair lending laws. In addition, the stated aim of a new technology is often to bring a product directly to consumers and eliminate a "middleman." In some cases, though, that individual in the middle could be an experienced bank employee with a sound understanding of customer needs and bank compliance obligations. Fintech companies and their employees may be unfamiliar with these responsibilities. Thus, fintech could increase the likelihood that banks expose themselves to excessive risks and that consumers engage in a financial activity and take on risks that are ill-suited to their financial circumstances and needs.[157]

Policymakers debate how well the existing bank regulatory framework accommodates beneficial innovation and protects against risks. The current bank regulatory framework was developed for banking in general and so may still be efficient and effective when innovative technologies are integrated.[158] Some observers argue that regulation could potentially impede the development and

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[155] This section was authored by David W. Perkins, specialist in macroeconomic policy. His contact information is available to congressional Members and staff through the internal CRS website.

[156] John C. Williams, President, Federal Reserve Bank of San Francisco, *Fintech: The Power of the Possible and Potential Pitfalls*, speech at the LendIt USA 2016 Conference, April 12, 2016, http://www.frbsf.org/our-district/press/presidents-speeches/williams-speeches/2016/april/fintech-power-of-the-possible-potential-pitfalls/.

[157] U.S. Government Accountability Office, *Financial Technology: Information on Subsectors and Regulatory Oversight*, GAO-17-361, April 2017, pp. 8-9, 34-35, 45, https://www.gao.gov/assets/690/684187.pdf.

[158] Larry D. Wall, "Avoiding Regulation: Fintech versus the Sharing Economy," Federal Reserve Bank of Atlanta: September 2016, https://frbatlanta.org/cenfis/publications/notesfromthevault/09-avoiding-regulation-fintech-versus-the-

introduction of beneficial innovation. Others are concerned that existing regulations may not adequately address certain risks posed by new technologies.[159] Regulatory arbitrage—conducting business in a way that circumvents unfavorable regulations—may be a concern in this area.[160]

Underpinning many of these debates are features of the frameworks of bank and nonbank regulation. In general, an institution that makes loans, processes payments, and, crucially, takes deposits—the core activities of traditional commercial banking—must have a government-issued charter.[161] Numerous types of national and state charters each determine what activities are permissible for the institution, what activities are restricted, and which agency will be the institution's primary federal regulator.[162] Meanwhile, nonbank institutions that only make loans or process payments and do not take deposits are in general licensed and regulated at the state level in the states they operate. Banks operate under federal preemptions of certain state laws, including state interest rate limits,[163] while nonbanks generally do not. In addition, certain regulations place obligations on banks and their contractors when companies perform certain services for banks. Each of these regulatory features has raised policy issues.

OCC "Fintech Charters"[164]

Online lenders and payment processors are prominent examples of companies that generally must obtain licenses or register in every state they operate in and may be subject to the consumer protection laws of that state, such as interest rate limits.[165] Proponents of fintech companies argue that subjecting certain technology companies to 50 different state-level regulatory regimes is unnecessarily burdensome and hinders companies that hope to achieve nationwide operations quickly using the internet.[166] In addition, uncertainty surrounding the applicability of certain laws and regulations to certain fintech firms and activities has arisen—for instance, whether federal preemption of state interest rate limits applies to loans made through a nonbank lender but

sharing-economy-2016-09-29#_edn5.

[159] U.S. Department of the Treasury, *Opportunities and Challenges in Online Marketplace Lending*, May 10, 2016, pp. 19-25, https://www.treasury.gov/connect/blog/Documents/Opportunities_and_Challenges_in_Online_Marketplace_Lending_white_paper.pdf.

[160] Greg Buchak et al., *Fintech, Regulatory Arbitrage, and the Rise of Shadow Banks*, National Bureau of Economic Research, Working Paper no. 23288, March 2017, pp. 1-6, http://www.nber.org/papers/w23288.pdf.

[161] Credit unions are also deposit-taking and loan-making institutions that require a federal or state charter and deposit insurance. However, they differ from banks in a number of ways, including being nonprofit institutions, and so are not discussed in this report. For more information on credit unions, see CRS Report R43167, *Policy Issues Related to Credit Union Lending*, by Darryl E. Getter; and CRS In Focus IF11048, *Introduction to Bank Regulation: Credit Unions and Community Banks: A Comparison*, by Darryl E. Getter.

[162] Federal Financial Institutions Examination Council, *Interagency Statement on Regulatory Conversions (FIL-40-2009)*, July 7, 2009.

[163] For more information, see CRS Report R45726, *Federal Preemption in the Dual Banking System: An Overview and Issues for the 116th Congress*, by Jay B. Sykes

[164] This section was authored by Andrew Scott, analyst in financial economics. His contact information is available to congressional Members and staff through the internal CRS website.

[165] Arthur S. Long, Jeffrey L. Steiner, and James O. Springer, *National Bank Charters for Fintech Firms*, Harvard Law School Forum on Corporate Governance and Financial Regulation, August 22, 2018, https://corpgov.law.harvard.edu/2018/08/22/national-bank-charters-for-fintech-firms/.

[166] Brian Knight, "Why State-by-State Fintech Oversight Doesn't Work," *American Banker*, September 6, 2016, https://www.americanbanker.com/opinion/why-state-by-state-fintech-oversight-doesnt-work.

originated by a bank (as discussed in more detail in the "Bank Loan Origination and Federal Preemption" section below).[167]

One possible avenue to ease the state-by-state regulatory burdens and resolve the uncertainties facing some fintech firms would be to grant national bank charters to firms that perform bank-like activities.[168] First proposed in 2016 by then-Comptroller of the Currency Thomas Curry,[169] and following subsequent examination of the issue and review of public comments,[170] the OCC announced in July 2018 that it would consider "applications for special purpose bank charters from financial technology (fintech) companies that are engaged in the business of banking but do not take deposits."[171]

Since the initial 2016 OCC announcement, the charter has been the subject of ongoing legal actions. After the OCC's July 2018 announcement, some state regulators filed lawsuits to block it.[172] In September 2019, a federal judge ruled that the Conference of State Bank Supervisors lacked standing and the claims were not ripe.[173] However, in October 2019 in a separate case brought by the New York State Department of Financial Services, a different federal judge ruled that the OCC lacked the authority to issue fintech charters.[174] No companies have officially applied for the fintech charter, reportedly due, at least in part, to the legal uncertainty and fintech companies' concerns over maintaining good relationships with their state regulators.[175]

The OCC stated that fintech firms that are granted the charter "will be subject to the same high standards of safety and soundness and fairness that all federally chartered banks must meet" and also that the OCC "may need to account for differences in business models and activities, risks, and the inapplicability of certain laws resulting from the uninsured status of the bank."[176] The

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[167] 786 F.3d 246 (2nd Cir. 2015). For a detailed examination of marketplace lending, including regulatory and legal uncertainties, see CRS Report R44614, *Marketplace Lending: Fintech in Consumer and Small-Business Lending*, by David W. Perkins. For a detailed legal examination of federal preemption of state law in banking, see CRS Report R45081, *Banking Law: An Overview of Federal Preemption in the Dual Banking System*, by Jay B. Sykes.

[168] The OCC has the authority to charter national banks (see 12 U.S.C. §27) including special purpose banks that, as described by the OCC's *Licensing Manual*, "may offer only a small number of products, target a limited customer base, incorporate nontraditional elements, or have narrowly targeted business plans." See OCC, *Comptroller's Licensing Manual: Charters*, September 2016, p. 50.

[169] Comptroller of the Currency Thomas Curry, "Regarding Special Purpose Charters for Fintech Companies," speech at Georgetown University Law Center, December 2016, https://www.occ.treas.gov/news-issuances/speeches/2017/pub-speech-2017-48.pdf.

[170] OCC, *Exploring Special Purpose National Bank Charters for Fintech Companies*, December 2016, https://www.occ.gov/topics/responsible-innovation/comments/special-purpose-national-bank-charters-for-fintech.pdf.

[171] OCC, "Policy Statement on Financial Technology Companies Eligibility to Apply for National Bank Charters," July 31, 2018, p. 1, https://www.occ.gov/publications/publications-by-type/other-publications-reports/pub-other-occ-policy-statement-fintech.pdf.

[172] CSBS, "CSBS Sues OCC Over Fintech Charter," press release, October 25, 2018, https://www.csbs.org/csbs-sues-occ-over-fintech-charter; and Jonathan Stempel, "New York Sues U.S. to Stop Fintech Bank Charters," Reuters, September 17, 2018, https://www.reuters.com/article/us-usa-treasury-fintech-lawsuit/new-york-sues-u-s-to-stop-fintech-bank-charters-idUSKCN1LU21O.

[173] Jon Hill, "CSBS Suit Over OCC Fintech Charter Tossed for Second Time," Law360, September 3, 2019, https://www.law360.com/articles/1195100/csbs-suit-over-occ-fintech-charter-tossed-for-second-time.

[174] Brendan Pedersen, "OCC Lacks Legal Power to Create Fintech Charter, Court Rules," *American Banker*, October 21, 2019, https://www.americanbanker.com/news/occ-lacks-legal-power-to-create-fintech-charter-court-rules.

[175] Todd H. Baker, "OCC Can't Claim Victory Despite Dismissal of Fintech Charter Suit," *American Banker*, September 16, 2019, https://www.americanbanker.com/opinion/occ-cant-claim-victory-despite-dismissal-of-fintech-charter-suit.

[176] OCC, *Comptroller's Licensing Manual Supplement: Considering Charter Applications from Financial Technology*

OCC argues that, because companies with such a charter would be explicitly subject to all laws and regulations applicable to national banks (including those that preempt state law, a contentious issue), they would be safely regulated. Thus, the argument goes, establishing a fintech charter would mean that a new set of innovative companies would face reduced regulatory uncertainty and could safely and efficiently provide beneficial financial services, perhaps to populations and market niches that traditional banks do not find cost-effective to serve.

How well an OCC fintech charter could foster potential innovations and benefits while guarding against risks is the subject of debate.[177] Proponents view the charter as a way to free companies from what they assert is the unnecessarily onerous state regulatory regimes without overly relaxing regulations.[178] Opponents generally assert both that the OCC does not have the authority to charter these types of companies and that doing so would inappropriately allow fintech companies to circumvent important state-level consumer protections.[179]

Congress could consider whether to explicitly authorize the OCC to the grant national fintech charters and thus resolve the legal uncertainty. Conversely, if Congress determines that the OCC should not grant these charters, it could prohibit it from doing so, perhaps by clarifying that the OCC general chartering authority extends only to deposit-taking institutions.

OCC Special Purpose Payments Charter

In June 2020, then-acting head of the OCC Brian Brooks announced plans to create an additional national banking charter for payment companies[180] that is based on, but separate from, the aforementioned fintech charter. Reports suggest that the OCC will roll out two phases of the charter, with the first version being a "national version of a state money transmitter license"[181] and the second including direct access to the Federal Reserve's payment system.[182] Some of the

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Companies, July 2018, p. 3, https://www.nacha.org/system/files/resources/OCC-Fintech-Charter-July-2018.pdf.

[177] Andrew J. Nard et al., "OCC: Fintechs May Now Apply for Bank Charters," *Financial Services Perspectives*, August 1, 2018, https://www.financialservicesperspectives.com/2018/08/occ-fintechs-may-now-apply-for-bank-charters/.

[178] Testimony of Nathaniel Hoopes, Executive Director, Marketplace Lending Association, U.S. Congress, House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit, *Examining Opportunities and Challenges in the Financial Technology ("Fintech") Marketplace*, 115th Cong., 2nd sess., January 30, 2018, pp. 9-10, https://financialservices.house.gov/uploadedfiles/hhrg-115-ba15-wstate-nhoopes-20180130.pdf.

[179] CSBS, "CSBS Responds to Treasury, OCC Fintech Announcements," press release, July 31, 2018, https://www.csbs.org/csbs-responds-treasury-occ-fintech-announcements.

[180] See ABA, "Podcast: OCC's Brooks Plans to Unveil 'Payments Charter 1.0' This Fall," June 25, 2020, https://bankingjournal.aba.com/2020/06/podcast-occs-brooks-plans-to-unveil-payments-charter-1-0-this-fall/.

[181] Victoria Guida, "Top Regulator Pushes Ahead with Plan to Reshape Banking, Sparking Clash with States," *Politico*, August 31, 2020, https://www.politico.com/news/2020/08/31/currency-comptroller-reshape-banking-406393; and ABA, "Podcast: OCC's Brooks Plans to Unveil 'Payments Charter 1.0' This Fall."

For more information on money transmitters, see CRS Report R46486, *Telegraphs, Steamships, and Virtual Currency: An Analysis of Money Transmitter Regulation*, by Andrew P. Scott.

[182] Morgan Lewis, "OCC Plans to Introduce Special Purpose National Bank Charter for Payments Companies," *JD Supra*, July 14, 2020, https://www.jdsupra.com/legalnews/occ-plans-to-introduce-special-purpose-32258/; and Judith E. Rinearson, "It's Ba-ack! OCC Planning a New Fintech Charter: 'Payments Charter 1.0,'" *National Law Review*, July 6, 2020, https://www.natlawreview.com/article/it-s-ba-ack-occ-planning-new-fintech-charter-payments-charter-10.

Under current law, the Federal Reserve must provide reserve accounts and payment services to depository institutions and the U.S. government (see 12 U.S.C. §§248a, 342). It is unclear how or whether institutions with a special purpose charter that do not take deposits would be allowed to use the Federal Reserve payment system. Other special bank types do not take deposits, but the OCC charters those banks under exemptions specified in the Bank Equality Banking Act (P.L. 100-86) (see 12 U.S.C. §1841(c)).

same uncertainties and legal concerns about the fintech charter are also present with the payment charter.[183]

Industrial Loan Company Charters[184]

Industrial loan companies (ILCs) hold a particular type of charter offered by some states that generally allows ILCs to engage in certain banking activities.[185] Depending on the state, those activities can include deposit-taking but only if they are granted deposit insurance by the FDIC. Thus, ILCs that take deposits are state-regulated with the FDIC acting as the primary federal regulator. Importantly, a parent company that owns an ILC that meets certain criteria is not necessarily considered a BHC for legal and regulatory purposes.[186] This means ILC charters create an avenue for commercial firms (i.e., companies engaged in selling goods and services, such as manufacturers, retailers, or technology companies) to own banks. Nonfinancial parent companies of ILCs are generally not subject to Fed supervision and other regulations pursuant to the Bank Holding Company Act of 1956 (P.L. 84-511).

A commercial firm may want to own a bank for a number of economic reasons. For example, an ILC can provide financing to the parent company's customers and clients and thus increase sales for the parent.[187] In recent decades, household-name manufacturers have owned ILCs at various times, including General Motors, Toyota, Harley-Davidson, and General Electric.[188] However, while they can generate profits and potentially increase credit availability, ILCs pose a number of potential risks.

Historically, U.S. policy has been to generally separate commerce and banking, because a bank subsidiary of a parent company involved in both activities could make decisions based on the interests of the larger organization, such as making overly risky loans to customers of a commerce subsidiary or providing funding to save a failing subsidiary. Such conflicts of interest could threaten the safety and soundness of the bank. Relatedly, some have argued that having a federally insured bank within a commercial organization is an inappropriate expansion of federal banking safety nets (such as deposit insurance). Certain observers, including community banks, have concerns over whether purely commercial or purely banking organizations would be able to

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For more information on the Federal Reserve payment system, see CRS Report R45927, *U.S. Payment System Policy Issues: Faster Payments and Innovation*, by Cheryl R. Cooper, Marc Labonte, and David W. Perkins.

[183] For example, see Victoria Guida, "Top Regulator Pushes Ahead with Plan to Reshape Banking, Sparking Clash with States," *Politico*, August 31, 2020, https://www.politico.com/news/2020/08/31/currency-comptroller-reshape-banking-406393.

[184] This section was authored by David W. Perkins, specialist in macroeconomic policy. His contact information is available to congressional Members and staff through the internal CRS website.

[185] As of January 2018, seven states—California, Colorado, Hawaii, Indiana, Minnesota, Nevada, and Utah—offered ILC charters. See James R. Barth and Yanfei Sun, *A New Look at the Performance of Industrial Loan Companies*, Utah Center for Financial Services, January 2018, p. 12, https://lassonde.utah.edu/wp/wp-content/uploads/2018/10/ILC_REPORT_BARTH_2018.pdf.

[186] Barth and Sun, *A New Look at the Performance of Industrial Loan Companies*, pp. 19-20.

[187] Kenneth Spong and Eric Robbins, "Industrial Loan Companies: A Growing Industry Sparks Debate," *Federal Reserve Bank of Kansas City Economic Review*, Fourth Quarter 2007, p. 43.

[188] James Barth et al., "Industrial Loan Companies: Where Banking and Commerce Meet," *New York University Salomon Center and Wiley Periodicals*, 2012, pp. 2-8.

These ILCs have generally closed voluntarily (or otherwise become inactive) or converted to more traditional bank charters.

compete with combined organizations that could use economies of scale and funding advantages to exercise market power.[189]

These arguments were prominent when Walmart and Home Depot tried unsuccessfully to secure ILC charters between 2005 and 2008.[190] Amid this debate, the FDIC imposed a moratorium in 2006 on the acceptance, approval, or denial of ILC applications for deposit insurance while the agency reexamined its policies.[191] The moratorium ended in January 2008. Subsequently, the Dodd-Frank Act mandated another moratorium (this one lasting three years, ending in July 2013) on granting new ILCs deposit insurance.[192]

Following a prolonged period with no ILC application approvals, the FDIC approved two ILCs—Nelnet and Square—for deposit insurance on March 20, 2020. On the same day, the FDIC announced it was issuing and seeking comments on a new proposed rule on deposit insurance for ILC applicants.[193] At that time, the FDIC did not have regulations specifically addressing ILC applications but had historically had internal policies requiring ILCs to make certain commitments as conditions of approval. The stated purpose of the proposed rulemaking was "to codify existing practices utilized by the FDIC" in its regulation of ILCs and their parent companies.[194] In general, the proposal would require ILCs and their parent companies to enter into certain commitments—which the FDIC has historically required on a case-by-case basis—including consenting to FDIC examination of the parent company, providing annual reports on the parent and its subsidiaries, and maintaining the depository's capital and liquidity at levels determined by the FDIC.[195] The FDIC finalized the rule on December 15, 2020, and it will go into effect on April 21, 2021.[196]

Commenters had mixed reactions to the rule when it was proposed. ILC proponents expressed approval of the FDIC's apparent willingness to again grant new ILCs deposit insurance through an explicitly codified process, even though they found certain details of the proposed rulemaking's requirements to be unnecessarily restrictive.[197] Although some ILC opponents were encouraged at what they viewed as a strengthening of supervision of ILC parents,[198] they generally asserted that the proposal did not address what they perceive as the fundamental issues:

[189] Spong and Robbins, "Industrial Loan Companies," pp. 57-64.

[190] Spong and Robbins, "Industrial Loan Companies," p. 57.

[191] FDIC, "Moratorium on Certain Industrial Loan Company Applications and Notices," press release, July 28, 2006, https://www.fdic.gov/news/news/press/2006/pr06073a.html.

[192] Barth and Sun, *A New Look at the Performance of Industrial Loan Companies and Their Contribution to the U.S. Banking System*, p. 6.

[193] FDIC, "FDIC Seeks Comment on Proposal to Ensure Safety and Soundness of Industrial Banks," press release, March 17, 2020, https://www.fdic.gov/news/press-releases/2020/pr20031.html.

[194] FDIC, "Parent Companies of Industrial Banks and Industrial Loan Companies," 85 *Federal Register* 17772, March 31, 2020.

[195] FDIC, "Parent Companies of Industrial Banks and Industrial Loan Companies," 85 *Federal Register* 17772, 17776-17780.

[196] FDIC, "FDIC Approves Rule to Ensure Safety and Soundness of Industrial Banks," press release, November 15, 2020, https://www.fdic.gov/news/press-releases/2020/pr20137.html.

[197] For example, see comment letter from Celia Winslow, Senior Vice President, American Financial Services Association, July 1, 2020, https://www.afsaonline.org/Portals/0/AFSA%20ILC%20Letter%20-%20FINAL.pdf.

[198] For example, see comment letter from Christopher Cole, Executive Vice President and Senior Regulatory Counsel, ICBA, July 1, 2020, https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/fdic-ilc-rule-comment-letter.pdf?sfvrsn=6c292717_0.

risks posed by allowing blending of commerce and banking and a lack of Federal Reserve supervision.[199]

Bank Loan Origination and Federal Preemption[200]

A number of nonbank lenders, including *fintech* or *marketplace* lenders, use a business model wherein an FDIC-insured bank originates a loan and the nonbank lender sells a note backed by the loan to investors. Some observers, including consumer advocacy groups, allege these indirect lending arrangements allow nonbank lenders to avoid individual state laws, such as *usury laws* limiting permissible interest rates charged. Generally, federal law provides that FDIC-insured banks are subject to the usury laws of only the states in which they are incorporated, even when lending to borrowers in other states with stricter usury laws.[201] Federal law accordingly preempts the application of state usury laws to FDIC-insured banks by allowing FDIC-insured banks to "export" the maximum interest rates of their "home" states when lending to borrowers in other states.[202]

Recently, certain judicial decisions have created uncertainty over whether states may enforce their usury laws against nonbanks that purchase loans from FDIC-insured banks. Specifically, these decisions have generated uncertainty regarding the circumstances in which nonbanks, which do not have the right to "export" the maximum interest rates of their "home" states when they originate loans to borrowers in other states, acquire that right with respect to loans they purchase from FDIC-insured banks.[203] A detailed legal analysis of such cases is beyond the scope of this report. What bears mentioning here is that until recently, nonbanks that purchased loans from FDIC-insured banks have generally assumed that they are entitled to federal preemption of state usury laws with respect to those loans under the *valid-when-made* principle.[204] According to this principle, which has been endorsed by some courts in certain contexts,[205] a loan that is non-usurious (and thus "valid") when originated remains non-usurious irrespective of the identity of

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[199] For examples, see comment letter from Cole, July 1, 2020; and comment letter from Dafina Stewart, Senior Vice President and Associate General Counsel, Bank Policy Institute, June 30, 2020, https://bpi.com/wp-content/uploads/2020/06/BPI-ILC-NPR-Parent-Companies-of-Industrial-Banks-and-Industrial-Loan-Companies-2020.06.30.pdf.

[200] This section was authored by David W. Perkins, specialist in macroeconomic policy. His contact information is available to congressional Members and staff through the internal CRS website.

[201] 12 U.S.C. §§85, 1831d.

[202] See Michael Marvin, "Interest Exportation and Preemption: Madden's Impact on National Banks, the Secondary Credit Market, and P2P Lending," *Columbia Law Review*, vol. 116, no. 7 (2016).

[203] Compare Madden v. Midland Funding, LLC, 786 F.3d 246, 252 (2d Cir. 2015) (holding that a debt collector did not benefit from federal preemption of state usury law with respect to debt purchased from a national bank), with Krispin v. May Dep't Stores, Co., 218 F.3d 919, 924 (8th Cir. 2000) (affirming a district court's exercise of removal jurisdiction over state law claims against the assignee of a national bank based on the doctrine of "complete preemption," reasoning that "it makes sense to look to the originating entity" to determine whether federal law preempts state law claims concerning loans originated by a national bank). See also Phipps v. FDIC, 417 F.3d 1006, 1013 (8th Cir. 2005) ("Courts must look at the originating entity (the bank), and not the ongoing assignee …, in determining whether the [National Bank Act] applies.") (internal quotation marks and citation omitted); FDIC v. Lattimore Land Corp., 656 F.2d 139, 148-49 (5th Cir. 1981) ("The non-usurious character of a note should not change when the note changes hands."). These court cases have not necessarily involved marketplace lenders directly, but the reasoning supporting the rulings could potentially be applied to other cases involving banks and third-party relationships, such as indirect marketplace lenders.

[204] See Robert Savoie, *Madden v. Midland Funding: A Sea Change in Secondary Lending Markets*, McGlinchy Stafford, December 14, 2015, https://www.mcglinchey.com/insights/madden-v-midland-funding-a-sea-change-in-secondary-lending-markets/.

[205] Savoie, *Madden v. Midland Funding*.

its subsequent purchasers. Several recent judicial decisions have cast doubt on whether the valid-when-made principle allows nonbanks to benefit from federal preemption.[206]

The FDIC and OCC have sought to affirm the valid-when-made principle through rulemaking.[207] On May 29, 2020, the OCC announced it had finalized a rule "reaffirming the long-standing understanding that a bank may transfer a loan without affecting the permissible interest term."[208] The FDIC followed suit, announcing on June 25, 2020, that it had finalized a rule mirroring the OCC rule.[209] Following these, several states sued to block the rules.[210]

On July 25, 2020, the OCC announced a proposed rule that would codify in regulation the conditions under which the bank is the "true lender" of a loan involving a third party.[211] Certain legal analysts have speculated that there is a strong chance that this rule will also be challenged if finalized.[212]

Congress could resolve the issue through legislation that explicitly mandated the circumstances under which loans are or are not subject to the federal preemption applicable to bank loans.

Technology Service Providers[213]

The bank regulators have authorities over certain companies that perform services for banks by contract. The Bank Service Company Act (P.L. 87-856) directs the federal depository institution regulators to treat all activities performed by contract for a bank as if they were performed by the bank itself, and it grants the regulators authority to examine and regulate certain third-party vendors that provide services to banks, including check and deposit sorting and posting, bookkeeping, and accounting. In addition, Section 501 of the GLBA requires federal agencies to establish appropriate standards for financial institutions to ensure the security and confidentiality of customer information. Pursuant to that law, the prudential depository regulators have issued a number of interagency guidelines requiring banks to establish information security programs beginning in 2001. The guidance advises banks to ensure that third-party vendors maintain appropriate security measures.[214]

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[206] *Madden v Midland Funding, LLC*, 786 F.3d at 252.

[207] For example, see Chairman Jelena McWilliams, *Statement on Notice of Proposed Rulemaking: Federal Interest Rate Authority*, FDIC, November 19, 2019, https://www.fdic.gov/news/speeches/spnov1919.pdf; and OCC, "Acting Comptroller of the Currency Statement Regarding the 'Madden' Rule," press release, May 29, 2020, https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-72.html.

[208] OCC, "OCC Issues Rule to Clarify Permissible Interest on Transferred Loans," press release, May 29, 2020, https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-71.html.

[209] FDIC, "FDIC Issues Rule to Codify Permissible Interest on Transferred Loans," press release, June 25, 2020, https://www.fdic.gov/news/press-releases/2020/pr20074.html.

[210] Patrice Hendriksen, "States Challenge FDIC 'Valid When Made' Rule with New Lawsuit," *JD Supra*, September 3, 2020, https://www.jdsupra.com/legalnews/states-challenge-fdic-valid-when-made-40638/.

[211] OCC, "Office of the Comptroller of the Currency Issues Proposed True Lender Rule," press release, July 20, 2020, https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-97.html.

[212] Sullivan and Cromwell, *OCC Proposes a Rule to Establish When a Bank Is the "True Lender" of a Loan*, July 24, 2020, https://www.sullcrom.com/files/upload/sc-publication-occ-proposes-rule-establish-bank-as-true-lender.pdf.

[213] This section was authored by David W. Perkins, specialist in macroeconomic policy. His contact information is available to congressional Members and staff through the internal CRS website.

[214] For example, see the following releases: FDIC, *Guidance for Managing Third-Party Risk*, FIL-44-2008, June 6, 2008; Federal Financial Institutions Examination Council, "Financial Regulators Release Guidance for the Supervision of Technology Service Providers," October 31, 2012, https://www.ffiec.gov/press/pr103112.htm; FDIC, *Technology Outsourcing: Informational Tools for Community Bankers*, FIL-13-2014, April 7, 2014; and FDIC Office of Inspector

In recent years, these authorities have come under scrutiny as banks increasingly rely on *technology service providers* (TSPs). While the regulators' authorities help ensure that banks are safe and sound and complying with applicable law, banks and technology company proponents argue that aspects of these regulations hinder banks and TSPs from entering into beneficial arrangements. Banks might not have the expertise or might find it too costly to monitor TSPs for compliance, and the TSPs might be hesitant to make themselves subject to bank regulator supervision. Some observers have suggested the regulation should be relaxed in this area, making it easier for banks to enter into contracts with TSPs that have good track records of performance in regulatory compliance.[215] However, the benefits of relaxing bank and TSP obligations may have to be weighed against the risk of making it easier for banks to enter into potentially unsafe or noncompliant arrangements.

One bank regulator has taken initial steps to create a mechanism to ease regulatory burden in this area. On July 20, 2020, the FDIC announced it was considering establishing a "voluntary certification program" for TSPs and other third-party service providers to make it easier for banks to find and contract with TSPs with good regulatory compliance capacities, and it requested input from the public.[216]

Environment, Social, and Governance (ESG) Issues

Investor and societal expectations that companies consider and address environmental, social, and governance (collectively, ESG) issues has been growing in recent years.[217] These expectations extend to banks as well, and large banks in particular have faced scrutiny about their providing credit and other services to certain companies and industries. This section provides background on this trend and examines how banks and regulators are reacting to climate change risks.

Background[218]

Certain investors across industries have begun to consider ESG issues as part of their processes to identify material risks and potential growth opportunities in their investments, though the importance of ESG in these considerations is subject to debate. In addition, for more than a decade, various institutions such as the Sustainability Accounting Standards Board, the Global Reporting Initiative, and the Task Force on Climate-related Financial Disclosures have continued to develop recommended standards defining *materiality* to include ESG standards for investment decisions.[219] Thus, investors may increasingly evaluate banks—particularly large, publicly traded

General, *Technology Service Provider Contracts with FDIC-Supervised Institutions*, Office of Audits and Evaluations, Report No. EVAL-17-004, February 2017.

[215] For example, see Anna Hrushka, "FDIC's Regulatory Framework 'Ripe for Revisiting,' Chair McWilliams Says," *Banking Dive*, October 23, 2019, https://www.bankingdive.com/news/jelena-mcwilliams-fdic-regulatory-framework-deposits-artificial-intelligence/565624/.

[216] FDIC, "FDIC Seeks Input on Voluntary Certification Program to Promote New Technologies," press release, July 20, 2020, https://www.fdic.gov/news/press-releases/2020/pr20083.html.

[217] See CRS In Focus IF11716, *Introduction to Financial Services: Environmental, Social, and Governance (ESG) Issues*, by Raj Gnanarajah and Gary Shorter.

[218] This section was authored by Raj Gnanarajah, analyst in financial economics. His contact information is available to congressional Members and staff through the internal CRS website.

[219] Usman Hayat and Matt Orsagh, *Environmental, Social, and Governance Issues in Investing: A Guide for Investment Professionals*, Chartered Financial Analyst Institute, October 2015, https://www.cfainstitute.org/en/advocacy/policy-positions/environmental-social-and-governance-issues-in-investing-a-guide-for-investment-professionals.

banks—on these factors. Also, institutional investors[220] and asset managers[221] have pressured companies and financial institutions, including banks, to address ESG risks as part of their business operations and investments.

ESG: General Concepts

While there is no formal definition of ESG, and what is within the scope of ESG is debatable, the following are often included:

Environmental: Environmental risks include physical risks, such as air and water pollution, and climate change effects, such as increased risk of floods, hurricanes, and forest fires. Related risks include the transition to a low-carbon economy where a technological breakthrough might decrease renewable energy prices and undermine the profitability of the fossil fuel industry.[222]

Social: Social considerations include the potential infringement on the rights of others, discrimination based on gender or ethnicity when hiring or promoting employees, failure to monitor the pay by suppliers and contractors to their employees, handling customer data in a non-transparent and non-secure way, and investing in projects or sectors that could be considered objectionable to certain segments of society. Some might consider investor or public pressure in these areas to be infringing on the rights of others to conduct business.[223]

Governance: A firm's policies, processes, and controls determine its self-governance and its effects on various stakeholders. A firm's integrity is measured by avoiding corruption, bribery, and engaging with individuals and other firms that may pose a reputational risk to the firm.[224] Traditionally, the governance component was the focus of ESG considerations. Arguably, the environmental and social components have become more prominent in recent years.

Importantly, ESG considerations can pose *reputational risk* to banks—the risk that negative public opinion of a bank's practices may cause the bank to lose customers and revenue or become involved in costly litigation. In recent years, some advocacy groups with social policy objectives have tried to convince large banks to discontinue relationships with certain industries, such as gun manufacturers, prison contractors, and energy companies with high carbon emissions.[225]

Some of the largest banks in the United States have stated they will not fund new drilling and exploration projects in the Arctic, and some have pledged multibillion-dollar investments in low-carbon, sustainable businesses. Banks may have taken these actions, at least in part, due to ESG considerations. This has caused concerns among some policymakers about banks unfairly denying services to oil and gas producers in Alaska and other states and the possible impact on the states' employment and economic growth.[226] In addition, eight large banks have reportedly

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220 California Public Employees' Retirement System, *Environmental, Social, and Governance Integration*, July 15, 2019, https://www.calpers.ca.gov/page/investments/sustainable-investments-program/esg-integration.

221 Larry Fink, Chairman and CEO, BlackRock, "Larry Fink's 2021 Letter to CEOs," https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter.

222 Joukje Janssen, "Six Challenges for Financial Institutions to Deal with ESG Risks, Environmental Risks," PricewaterhouseCoopers, https://www.pwc.nl/en/insights-and-publications/services-and-industries/financial-sector/six-key-challenges-for-financial-institutions-to-deal-with-ESG-risks.html.

223 Janssen, "Six Challenges for Financial Institutions."

224 Janssen, "Six Challenges for Financial Institutions."

225 For examples, see Guns Down America, "Is Your Bank Loaded," https://isyourbankloaded.org/; Shahrzad Habibi, Kevin Cooper, and Maggie Corser, *The Wall Street Banks Still Financing*, In the Public Interest, Public Accountability Initiative, and Center for Popular Democracy, April 2019, http://www.inthepublicinterest.org/wp-content/uploads/Updated-2019-Data-Brief.pdf; and Alison Kirsch et al., *Banking on Climate Change*, Rainforest Action Network, https://www.ran.org/wp-content/uploads/2019/03/Banking_on_Climate_Change_2019_vFINAL1.pdf.

226 Christopher M. Matthews and Orla McCaffrey, "Bank's Arctic Financing Retreat Rattles Oil Industry," *Wall Street Journal*, October 8, 2020, https://www.wsj.com/articles/banks-arctic-financing-retreat-rattles-oil-industry-11602157853.

committed to stop extending term loans and lines of credit to the private prison industry.[227] Some policymakers assert that banks are inappropriately denying services to lawful businesses and using their financial power to implement social policy.[228] Certain bills in the 116th Congress—including S. 821 and S. 1104—would have imposed penalties on bank for doing so.

In response to concerns about banks withdrawing from certain industries, the OCC (under then-Acting Comptroller Brian Brooks) issued a notice of proposed rulemaking in November 2020.[229] The OCC noted that the proposal was intended to ensure financial access to all sectors of the economy. Under the proposal, national banks with more than $100 billion in assets would generally not be allowed to "deny any person a financial service the bank offers except to the extent justified by such person's quantified and documented failure to meet quantitative, risk-based standards established in advance by the covered bank."[230] After the OCC had finalized the rule but before it appeared in the *Federal Register*, the OCC (under the new Acting Comptroller Blake Paulson) paused publication and implementation of the rule to give the next confirmed comptroller the opportunity to review it.[231]

Meanwhile, the FDIC reportedly has no plans to implement a similar regulation "at this time."[232] This raises the possibility that different banks will face different requirements in this area.

Climate Change Risks[233]

Potential risks to the financial system from climate change have attracted growing attention in government, academia, and the media, raising questions about the roles of central banks and bank regulators in addressing such risks.[234] The Federal Reserve has noted that climate change may affect its responsibilities involving financial stability, monetary policy, and banking supervision.[235] According to its November 2020 *Financial Stability Report*, the Federal Reserve noted that climate change may affect each of these responsibilities either through physical risks (e.g., more numerous and larger storms and wildfires) or "transition risk," meaning the risk that changed government policies or market perceptions might lead to sudden asset price drops (e.g., falling stock values for carbon-emitting industries).[236] The report also warned that sudden hazards

[227] Those banks are JP Morgan Chase, Wells Fargo, Bank of America, SunTrust, BNP Paribas, Fifth Third Bancorp, Barclays, and PNC. See Morgan Simon, "GEO Group Runs Out of Banks as 100% of Banking Partners Say 'No' to the Private Prison Sector," *Forbes*, updated October 10-11, 2019, https://www.forbes.com/sites/morgansimon/2019/09/30/geo-group-runs-out-of-banks-as-100-of-banking-partners-say-no-to-the-private-prison-sector/?sh=32b05f033298.

[228] Kate Berry, "Crapo Presses Banks to Keep Serving 'Politically Disfavored' Industries," *American Banker*, March 27, 2020.

[229] OCC, "Fair Access to Financial Services," 85 *Federal Register* 75261, November 25, 2020.

[230] OCC, "Fair Access to Financial Services," 85 *Federal Register* 75261, 75265..

[231] OCC, "OCC Puts Hold on Fair Access Rule," press release, January 28, 2021, https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-14.html.

[232] Alan S. Kaplinsky, "FDIC Not Expected to Issue Fair Access Rule," Ballard Spahr, December 14, 2020, https://www.consumerfinancemonitor.com/2020/12/14/fdic-not-expected-to-issue-fair-access-rule/.

[233] This section was authored by Rena S. Miller, specialist in financial economics. Her contact information is available to congressional Members and staff through the internal CRS website.

[234] See, for example, Pierpaolo Grippa, Jochen Schmittmann, and Felix Suntheim, *Climate Change and Financial Risk*, International Monetary Fund, December 2019, https://www.imf.org/external/pubs/ft/fandd/2019/12/pdf/climate-change-central-banks-and-financial-risk-grippa.pdf.

[235] For more background on the Federal Reserve, see CRS In Focus IF10054, *Introduction to Financial Services: The Federal Reserve*, by Marc Labonte.

[236] Board of Governors of the Federal Reserve System, *Financial Stability Report*, November 2020, p. 58,

can bring about direct losses that could negatively impact banks' assets[237] and asserted that even slowly developing hazards such as rising sea levels could lead to sudden price drops for bank assets if public perceptions change abruptly.

The issues of whether and how the Federal Reserve and other prudential regulators may adapt their banking supervision to more directly address climate change risks is likely to continue to be an active issue for regulators and for congressional oversight. In an April 2019 response to a congressional request,[238] Federal Reserve Board Chair Jerome Powell outlined how the Federal Reserve uses its authority and tools to prepare banks for weather events. The Federal Reserve bases its assessment of lending risks from climate-related events on a broader 1996 supervisory guidance and a 1996 supervisory letter, which, he noted, "provides supervisors the flexibility necessary to address risks from severe weather events."[239]

Notwithstanding the 1996 guidance and its broad scope, some observers question whether bank supervisors should more overtly address climate-related risks. One possible regulatory approach is to subject financial institutions to climate risk stress testing.[240] At the same time, bank industry groups and other observers assert that applying a financial stress-testing program—which typically models the potential effects of a sudden financial crisis over a two- to three-year time frame—to a process likely to unfold over the course of decades could pose many technical challenges and result in an inefficient regulatory exercise.[241]

Climate Risk Stress Testing: Current Initiatives and Challenges

As mentioned in the "Large Banks and "Too Big to Fail"" section, certain large banks are subject to stress testing. In these tests, regulators project losses an individual bank might incur over some time period—generally, U.S. regulators project for the upcoming nine fiscal quarters—as the result of a financial crisis. Climate risk is not currently a required factor in stress-testing programs for most individual banks. However, a New York Federal Reserve Bank official noted in a March 2020 speech that a number of financial institutions have begun using "climate-related scenario analysis" of their own accord to model potential risks.[242] In addition, the New York State Department of Financial Services—which oversees banks with assets totaling $2.6 trillion—announced on October 29, 2020, that all New York–regulated banking organizations must begin integrating financial risks from climate change into their governance frameworks, risk management, and business strategies.[243]

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https://www.federalreserve.gov/publications/files/financial-stability-report-20201109.pdf#page=58.

[237] Board of Governors of the Federal Reserve System, *Financial Stability Report*, November 2020, p. 58.

[238] Letter from Federal Reserve Board Chairman Jerome Powell to the Honorable Brian Schatz, April 18, 2019, https://www.schatz.senate.gov/imo/media/doc/Chair%20Powell%20to%20Sen.%20Schatz%204.18.19.pdf.

[239] Letter from Chairman Powell to Senator Schatz, April 18, 2019.

[240] For example, see Commodity Futures Trading Commission, *Managing Climate Risk in the U.S. Financial System*, Report of the Climate-Related Market Risk Subcommittee Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission, September 9, 2020, https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report.pdf.

[241] For example, see Greg Baer, "Climate Risk Test Asks Banks to Look Too Far Down the Road," *American Banker*, November 30, 2020, https://www.americanbanker.com/opinion/climate-risk-test-asks-banks-to-look-too-far-down-the-road.

[242] Kevin Stiroh, Federal Reserve Bank of New York, "Climate Change and Risk Management in Bank Supervision," Remarks at Risks, Opportunities, and Investment in the Era of Climate Change, Harvard Business School, March 4, 2020, https://www.newyorkfed.org/newsevents/speeches/2020/sti200304.

[243] New York Department of Financial Services, "Industry Guidance Re. Climate Change and Financial Risks,"

Internationally, a group of central banks called the Network for Greening the Financial System, in which the Federal Reserve is seeking membership, has begun developing methodologies for conducting climate stress testing.[244]

Climate stress testing could pose significant challenges because of differences from the existing stress tests already conducted by the Federal Reserve and large banks. For instance, one banking industry white paper noted that while there is extensive historical data on the interactions between macroeconomic and financial variables, there is far less data on the interaction between climate events and financial variables.[245] Climate stress testing would be aimed at measuring future effects that may not emerge in a linear fashion but may accelerate, adding further difficulty to modeling. Whereas existing U.S. stress testing typically models the upcoming nine fiscal quarters, the effects of climate change are estimated over multiple decades. In addition, determining financial effects of climate change involves the extent to which government policies may change. This remains highly uncertain—yet would likely have significant effects on any transition risk. Climate stress testing appears more sensitive than traditional capital stress testing to modeling criteria and assumptions that face a high degree of uncertainty, which could create greater variance in outcomes.[246] Given these challenges and uncertainties, certain bank industry observers have argued that a stress-testing program would be an inefficient tool to apply to climate change risk. Others, however, point out that prudential regulators have a responsibility to prepare for the potential impacts from climate change in a variety of possible future states of the world, or "climate scenarios," despite these difficulties.[247]

Outlook for Banking Industry and Policy Debates

The ongoing effects of the COVID-19 pandemic on banks and their customers may continue to attract a large amount of congressional and regulator attention, at least early in the 117th Congress. How economic and financial conditions unfold and how well the bank industry withstands losses and avoids widespread failures is likely to largely determine what further response policymakers may undertake. If the economy recovers quickly and consumers and businesses are able to continue or resume making payments (especially as CARES Act–mandated consumer forbearances expire), then the banking industry is likely to absorb losses and recover without significant adjustments to regulation. On the other hand, if the effects of the pandemic persist and many borrowers ultimately cannot repay significant portions of their loans, the negative effects could be far-reaching. Mortgage foreclosures and other loan defaults would mean people would lose their homes and potentially have their credit scores damaged. Meanwhile, banks would be incurring significant losses, and failures could become widespread, potentially endangering financial system stability. The pandemic will put the post 2007-2009 crisis regulatory framework to a significant test for the first time, and depending on how the banking industry fares, it is possible significant regulatory changes and even government interventions will be undertaken.

October 29, 2020, https://www.dfs.ny.gov/industry_guidance/industry_letters/il20201029_climate_change_financial_risks.

[244] Network for Greening the Financial System, *Guide to Climate Scenario Analysis for Central Banks and Supervisors*, June 2020, https://www.ngfs.net/sites/default/files/medias/documents/ngfs_guide_scenario_analysis_final.pdf.

[245] Francisco Covas, "Challenges in Stress Testing and Climate Change," Bank Policy Institute, October 19, 2020, https://bpi.com/challenges-in-stress-testing-and-climate-change/.

[246] Covas, "Challenges in Stress Testing and Climate Change."

[247] See, for example, Network for Greening the Financial System, *Guide to Climate Scenario Analysis for Central Banks and Supervisors*, p. 1.

Long-standing, perennial bank policy issues may continue to be of interest to Congress during the pandemic and come to the forefront once the effects of the pandemic begin to fade. Whether the benefits that come from the current regulatory framework—such as bank safety and soundness, systemic stability, and fair outcomes and access for consumers—are efficiently achieved without imposing unnecessary costs on banks and reductions in credit availability continues to be open to debate. The continued decline of community banks and questions over how to appropriately regulate "too big to fail" banks will likely continue to attract attention.

Congress may also examine issues that have more recently rose to prominence. As technology companies increasingly perform activities traditionally associated with banking, explore options to become or own chartered banks, and partner with banks, questions about whether the current legal and regulatory framework appropriately foster the benefits and mitigate the risks arising from such arrangements could be asked. As some in society continue to evaluate banks based on ESG considerations and in doing so alter bank behavior—including by potentially convincing banks not to do business with certain industries—policymakers may examine whether this creates desirable outcomes.

Appendix. CRS Banking Resources

CRS has produced numerous written products and recorded seminars and podcasts that examine the issues covered in this report in more detail and other issues not covered in this report. The following lists are not comprehensive but rather a selection of resources closely related to issues covered in this report. Additional resources are available at the CRS website.

Table A-1. Selected Written Products

Topic	Product
Background and Overviews	CRS In Focus IF10035, *Introduction to Financial Services: Banking*, by Raj Gnanarajah and David W. Perkins
	CRS Report R44918, *Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework*, by Marc Labonte
	CRS Report R45051, *Tailoring Bank Regulations: Differences in Bank Size, Activities, and Capital Levels*, by David W. Perkins
Major Legislation	CRS Report R41350, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Background and Summary*, coordinated by Baird Webel
	CRS Report R45073, *Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174) and Selected Policy Issues*, coordinated by David W. Perkins
Safety and Soundness	CRS Report R44573, *Overview of the Prudential Regulatory Framework for U.S. Banks: Basel III and the Dodd-Frank Act*, by Darryl E. Getter
	CRS In Focus IF10809, *Introduction to Bank Regulation: Leverage and Capital Ratio Requirements*, by David W. Perkins
	CRS Report R45989, *Community Bank Leverage Ratio (CBLR): Background and Analysis of Bank Data*, by David W. Perkins
	CRS Report R46648, *Bank Supervision by Federal Regulators: Overview and Policy Issues*, by David W. Perkins
	CRS Report R45339, *Banking: Current Expected Credit Loss (CECL)*, by Raj Gnanarajah
	CRS Report R44429, *Financial Services and Cybersecurity: The Federal Role*, by M. Maureen Murphy and Andrew P. Scott
Consumer Access and Fairness	CRS Report R45813, *An Overview of Consumer Finance and Policy Issues*, by Cheryl R. Cooper
	CRS Report R45979, *Financial Inclusion and Credit Access Policy Issues*, by Cheryl R. Cooper
	CRS In Focus IF11631, *Financial Inclusion: Access to Bank Accounts*, by Cheryl R. Cooper
COVID-19 and Policy Response	CRS Report R46422, *COVID-19 and the Banking Industry: Risks and Policy Responses*, coordinated by David W. Perkins
	CRS Report R46356, *COVID-19: Consumer Loan Forbearance and Other Relief Options*, coordinated by Cheryl R. Cooper
	CRS Report R46301, *Title IV Provisions of the CARES Act (P.L. 116-136)*, coordinated by Andrew P. Scott
"Too Big to Fail"	CRS Report R42150, *Systemically Important or "Too Big to Fail" Financial Institutions*, by Marc Labonte

Topic	Product
	CRS In Focus IF10700, *Introduction to Financial Services: Systemic Risk*, by Marc Labonte
"Fintech" in Banking	CRS Report R45726, *Federal Preemption in the Dual Banking System: An Overview and Issues for the 116th Congress*, by Jay B. Sykes
	CRS Report R44614, *Marketplace Lending: Fintech in Consumer and Small-Business Lending*, by David W. Perkins
	CRS Report R46489, *Industrial Loan Companies (ILCs): Background and Policy Issues*, by David W. Perkins
	CRS In Focus IF10935, *Technology Service Providers for Banks*, by Darryl E. Getter
ESG Issues	CRS Insight IN11545, *How Do Bank Regulators Treat Climate Change Risks?*, by Rena S. Miller

Source: CRS.

Table A-2.Selected Recorded Products

Topic	Title
Background and Overviews	CRS Recorded Event WRE00272, *Introduction to the Business and Regulation of the Banking Industry*, by David W. Perkins
Major Legislation	CRS Recorded Event WRE00177, *The Dodd-Frank Act: Composition and Proposals*, by Marc Labonte
	CRS Recorded Event WRE00244, *Banking Policy Issues in the 115th Congress*, by Marc Labonte and David W. Perkins (includes discussion on EGRRCPA)
Safety and Soundness	CRS Recorded Event WRE00123, *Basics of Risk Regulation for Insured Depository Institutions*, by Darryl E. Getter
COVID-19 and Policy Response	CRS Video WVB00319, *Consumer Debt Relief during the COVID-19 Pandemic*, by Cheryl R. Cooper and Andrew P. Scott
	CRS Report WPD00025, *COVID-19 and the Financial System: Banks*, by David W. Perkins and Andrew P. Scott
	CRS Report WPD00027, *COVID-19 and the Financial System: Consumer Loan Forbearance*, by Cheryl R. Cooper and Andrew P. Scott
	CRS Report WPD00028, *COVID-19 and the Financial System: Household Debt*, by Cheryl R. Cooper and Lida R. Weinstock
	CRS Report WPD00026, *COVID-19 and the Financial System: Federal Reserve Response*, by Marc Labonte and Lida R. Weinstock
Too Big to Fail	CRS Recorded Event WRE00066, "*Too Big to Fail*" *Financial Firms*, by Marc Labonte
"Fintech in Banking"	CRS Recorded Event WRE00321, *Recent Developments in FinTech Regulation*, by David W. Perkins, Eva Su, and Jay B. Sykes

Source: CRS.

Notes: Recordings with product number prefixes WPD and labelled "Reports" in this table are CRS podcasts.

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