



## *FedFin Daily Briefing*

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Monday, March 21, 2016

### **Goldman Approval Opens Door for Limited GSIB M&A**

Braving populist critics like Sen. Sanders (I-VT), the Federal Reserve today approved one of the most controversial applications to have recently come before it: Goldman Sachs' bid to buy GE Capital's retail deposits and related operations. More than eighty commenters weighed in because it was clear from the outset that community advocates joined with those seeking to break up big banks to block a transaction that would make a GSIB still bigger. The FRB is sure to come under particularly harsh criticism on this latter point at forthcoming FRB-Minneapolis debates because, in this approval, it argues that the acquisition enhances financial stability. It reaches this result by concluding that the transaction does not materially increase Goldman's systemic footprint and in fact strengthens the company (and thereby the system) because of the broader and more stable funding base Goldman now acquires. The FRB is also comforted by the fact that the transaction reduces GE's systemic impact. This conclusion signals that, depending on the fact pattern, the FRB has adopted an open-door policy to GSIB M&A as long as deals are small and Board policy objectives are enhanced.

Opponents cited the BHC's HMDA record to argue it discriminates against minority mortgage borrowers, but the FRB disagreed because the BHC is not a retail lender and its portfolio should thus not be considered representative of the community. This finding is germane to other non-traditional banking organizations looking to acquire banking operations to the extent these transactions fall under the FRB – others, like PayPal's reported efforts to explore creation of a non-bank bank, proceed under state authority. The approval may be found at <http://www.federalreserve.gov/newsevents/press/orders/orders20160321a1.pdf>.

### **Prepaid Card Guidance Adds Sweeping Customer - Identification Requirements**

The FRB, FDIC, NCUA, OCC, and FinCEN today released joint guidance on customer identification program (CIP) requirements for prepaid cards, clarifying cases where they do and do not apply and the status of third-party program managers. The new standards will require sweeping new account-opening procedures at many banks, reflecting growing fears that prepaid cards are a growing financing source for criminals and terrorists.

The CIP rule requires banks to obtain identity information for customers opening accounts, with an "account" defined as a formal banking relationship (e.g., deposit/transaction/credit accounts establish such a relationship, but products like wire transfers or check cashing do not). The guidance states that prepaid cards which can reload funds or have credit or overdraft features should be treated as analogous to an account, but cards without these features are not subject to CIP requirements.

In cases where the cards establish a formal banking relationship, third-party program managers are treated as agents and not as customers of the bank, and banks are responsible for ensuring that these third parties comply with the CIP rule. Third-party managers are also treated as agents and not customers even if they hold funds on behalf/in trust of cardholders in pooled accounts. In cases

where prepaid cards do not establish an account, the manager is considered a customer and banks do not need to "look through" to establish the identities of the cardholders. Banks' contracts with third-party managers should at minimum outline CIP obligations, ensure the right of the bank to immediately obtain CIP information, provide the bank with the right to audit and monitor the manager, and indicate the ability of regulators to examine the manager.

In the case of payroll cards, if the employer or the employer's agent is the only person permitted to deposit funds, the employer is the bank's customer; if the employee may access credit or reload the card, banks must apply CIP rules to each employee with a card. CIP rules do not apply to government benefit cards if only government funds can be placed on the card and employees cannot access credit, but would apply if either is not true. In the former case, banks do not need to apply CIP rules to federal or state departments, agencies, and political subdivisions as they do not count as "customers" under the CIP rule. Health Savings Accounts are established by employees and may involve contributions by employees, and employees are thus individually customers under the rule. Flexible Spending Arrangements and Health Reimbursement Arrangements are established by employers, and only the employers count as customers. The guidance may be found at <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160321a1.pdf>.

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## Recent Files Available for Downloading

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The following reports and analyses have been sent to retainer clients recently. Copies are also available to retainer clients on the Archives section of Federal Financial Analytics' website: [www.fedfin.com](http://www.fedfin.com) or clients may obtain the reports/analyses by e-mailing [requests@fedfin.com](mailto:requests@fedfin.com) giving the requested item name, firm, and e-mail address. To learn more about GSE Activity Reports, click: [http://www.fedfin.com/index.php?option=com\\_content&view=article&id=18&Itemid=18](http://www.fedfin.com/index.php?option=com_content&view=article&id=18&Itemid=18)

- **GSE-031716:** We have completed our review of all the publicly-available data on the new JPM RMBS and conclude that it is the first U.S. covered bond issued since the crisis by a U.S. bank for U.S. mortgages. We doubt it will be the last because it provides JPM and other big banks with significant strategic advantages.
- **OPSRISK18:** The Basel Committee has advanced action on its rewrite of the operational risk-based capital (ORBC) plans in the Basel III accord that were unchanged in 2010 from the ORBC requirements in the 2004 Basel II Accord.
- **VC5:** In this report, we analyze the House Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade hearing on digital currency and blockchain technology, attended by only a handful of Members.
- **DEPOSITINSURANCE107:** The FDIC finalized its large-bank deposit insurance fund (DIF) surcharge, setting its policy for increasing the DIF ratio from 1.15 percent to 1.35 percent. The final rule largely follows the proposal, but includes adjustments to the system of small-bank

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assessment-credits that will allow small banks to receive their rebates sooner than in the proposed rule.

- **CONCENTRATION9:** Attempting to constrain the inter-connectedness many believe to be a prime driver of systemic risk, the FRB has revived a proposal first issued in 2011 to impose single-counterparty credit limits (SCCLs) on U.S. BHCs with assets over \$50 billion and large foreign banking organizations (FBOs).
- **GSE-031016:** The FRB advanced a proposal simmering since 2011 to impose single-counterparty credit limits (SCCLs) on the largest U.S. banks. Federal Home Loan Banks are exempt by law from the new rules, but Fannie and Freddie could well have come under them, sharply reducing the ability of big banks to be GSE investors and counterparties.
- **LIQUIDITY24:** The federal banking agencies have issued supervisory guidance sanctioning funds transfer price (FTP) practices they believe pose interest rate and/or liquidity risk, as well as contingent-liquidity risk at large banking organizations.
- **CONCENTRATION8:** The FRB released a revised approach to setting single-counterparty credit limits (SCCLs) that as anticipated is not only tougher than the global rules (see FSM Report **CONCENTRATION5**), but also very stringent for the largest U.S. banks and FBOs doing business here.