



FedFin Daily Briefing

Tuesday, July 28, 2020

Global Pressure Grows on Capital Distributions, Bonuses

Although the FRB and other federal agencies have so far permitted dividend payments and discretionary bonuses for most banking organizations, the EU regulators today increased pressure against bank capital distributions, with the [ECB going beyond its previous insistence](#) that banks cease dividends and share buy-backs until October with a new and stronger statement against them until 2021. The ECB also urges “extreme moderation” on bonuses reiterating that these restrictions are essential given prior ECB authorization for buffer drawdowns. The U.K.’s [PRA also reinforced](#) its statements against capital distributions and discretionary bonuses, now determining policy for 2021 in the fourth quarter of this year. The ECB will review the capital policy during the fourth quarter on a bank-by-bank basis and do so continuously for banks with regard to remuneration until the crisis ebbs. Operational-relief measures (e.g., supervisory holidays) other than those related to non-performing loans will not be extended later this year.

Emergency Fed Facilities Extended to Year End

Reflecting recent downturns in the midst of the pandemic, the Fed [today](#) extended through the end of the year its emergency lending facilities ([see Client Report COVID10](#)). The extension applies to the Fed’s Primary Dealer Credit Facility, Money Market Mutual Fund Liquidity Facility, Primary Market Corporate Credit Facility, Secondary Market Corporate Credit Facility, Term Asset-Backed Securities Loan Facility, Paycheck Protection Program Liquidity Facility, and Main Street Lending Program. The Municipal Liquidity Facility is already set to expire at year end, and the Commercial Paper Funding Facility expires on March 17. Pending legislation to provide more COVID relief may change the terms of the municipal facility to force the Fed to provide more support over longer time periods, but there does not now appear to be any move to increase Treasury’s backstop funding for these facilities in ways that would otherwise facilitate greater risk-taking absent express statutory direction.

Durbin Releases Debit-Card Demand

Senate Minority Whip Durbin (D-IL) and Rep. Peter Welch (D-VT) late yesterday [released the debit-card posting letter](#) covered earlier in the day [by the Wall Street Journal](#). The letter does not take issue with bank debit-card interchange fees in response to the Dodd-Frank provisions generally known as the Durbin Amendment ([see FSM Report INTERCHANGE7](#)), complaining instead about alleged instances in which banks do not, as also required, allow merchants to select at least two clearing networks. Asserting that debit-card transactions can often be posted only with Visa or Mastercard, the letter argues that this prevents merchants from accessing lower-cost networks and drives up merchant costs at a dangerous and difficult time. The letter specifically requests a Fed investigation of any practices by major debit-card issuers that fail to enable PIN-less functionality or may be in collusion with Visa and Mastercard. No deadline for Fed action is set. Since neither Sen.

Durbin nor Rep. Welch sit on committees of jurisdiction, the issue is not likely to come up in hearings or pending legislation in the foreseeable future.

OCC Launches Anti-ESG Lending Investigation

As [anticipated](#), Acting Comptroller Brooks has told Sen. Dan Sullivan (R-AK) that he shares the senator's view that blanket decisions by banks to cease fossil-fuel lending curtails essential economic activity and violates federal law. The lone regulator among the federal ones to whom Sen. Sullivan sent an inquiry in June to release its response, the OCC will investigate banks with policies in this sector to determine if these decisions violate any duty or obligation under federal law such as those mandating "fair access." If the inquiry demonstrates potential violations, then the OCC will consider issuing a rule stipulating what constitutes "fair access." The OCC's approach is similar in intent, if not also in relevant statute, to a recent and [controversial proposal](#) by the Department of Labor to constrain ESG investing, much of which is aimed at banning fossil-fuel holdings in favor of green energy.

HFSC Preps HEROES Act Provisions for COVID-Relief Negotiations

HFSC [late yesterday](#) highlighted several bills under consideration that may be raised at its hearing with CFPB Director Kraninger on Thursday. Although noting bills in committee memoranda does not signal plans for action on them, it does fulfill requirements under committee rules that then allows the legislation to advance at a later date. Many of the noted bills are being positioned for the broader COVID-relief package now being negotiated, but none will advance via regular order given the manner in which this must-pass, controversial measure is being crafted by House and Senate leadership.

Bills highlighted in advance of Director Kraninger's hearing include H.R. 6361 from Rep. Perlmutter (D-CO) to implement a temporary debt collection moratorium for small businesses and non-profits, H.R. 6370 from Rep. Sherman (D-CA) to suspend negative consumer credit reporting during the pandemic and other declared major disasters, and H.R. 6742 from Rep. Clay (D-MO) to provide additional mortgage foreclosure and forbearance protections and extend the GSE patch until June 1, 2022. Draft legislation from Rep. Beatty (D-OH) would provide for a temporary debt collection moratorium for consumers for the duration of the COVID emergency. Substantively similar provisions to all four bills were included in the House-passed HEROES Act ([see Client Report RESCUE73](#)). In the Senate, Sens. Scott (R-SC) and Manchin (D-WV) have introduced S. 4325, a renewed attempt to limit CFPB authority over insurance companies likely to be brought up tomorrow when Ms. Kraninger appears before Senate Banking. FedFin will provide in-depth analyses of both sessions.

FedFin Analysis: COVID Package Working-Capital Loan Program

Among the provisions key to clients pending in the controversial COVID package is Senate GOP language (sec. 112) to create a “Recovery Sector Loan” program. Established within the broad ambit of the SBA’s 7(a) authority, these working-capital loans could go to small businesses (generally fewer than 250 employees) with significant operations in lower-income areas that experienced revenue drops of fifty percent or more due to the pandemic. Loans could also go to affiliates of these companies, a provision perhaps intended to allow private-equity investors to gain access to this program despite denial to them of the PPP. The no-credit-elsewhere test usual in SBA programs and applied to some extent in recent Fed facilities is expressly waived along with SBA fees. Loans could have maturities of up to twenty years, with rates indexed to SOFR (not LIBOR as the Fed chose to do for practical reasons). Loans would be SBA-guaranteed for principal and interest rates set quarterly based on SOFR plus three percent but borrowers would pay only one percent, with all payments deferred for at least two years at cost only to the SBA. Banks or other SBA-eligible lenders would get principal-and-interest payments during this deferral period and keep the difference between the one percent rate paid by borrowers and the SOFR+3 rate, but it appears that the guaranteed rate by SBA is only one percent; banks thus would take credit risk related to the applicable interest-rate differential. SBA would also reimburse lenders for specified processing and servicing fees, with SBA told to make origination, processing, and servicing compatible to the greatest extent possible -- a provision doubtless intended to avert at least some of the chaos surrounding PPP’s launch.

GOP Senators Question FRB's COVID Role

At today’s Senate Homeland Security hearing on oversight of CARES Act financial relief, the Fed’s role came under increasing criticism. Chairman Johnson (R-WI) took issue with growing FRB purchases of Treasury debt, warning that rising reserve levels come at the expense of bank lending to the private sector. Sen. Hawley (R-MO) questioned whether Congress should direct any financial relief through the FRB, arguing that its facilities have primarily benefited the largest corporations. He also criticized the Main Street Lending Program’s eligibility terms as overly “onerous.” Sen. Johnson also strongly opposes automatic forgiveness of PPP loans under \$150,000, saying that this would be “disastrous” for oversight. Both Sen. Johnson and Ranking Member Peters (D-MI) also support strengthening the Pandemic Response Accountability Committee’s (PRAC) oversight powers, with Sen. Johnson supporting Sen. Hassan’s (D-NH) push to expand its subpoena powers, resources, and hiring authorities.

Biden: Expand CRA, Press FedNow, Impose Fed Racial-Equality Reports

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Advancing many provisions of the [Biden-Sanders unity task force](#), the Biden Campaign [today](#) unveiled its plan to combat racial economic inequality. Going beyond that work but echoing other campaign recommendations, the final plan includes a pledge to strengthen and expand the Community Reinvestment Act to cover nonbank financial institutions, including mortgage, insurance, and fintech companies. The new CRA would also require firms to issue public-interest commitments, presumably an effort to advance stakeholder capitalism without a broader and more high-profile campaign in this controversial arena. Although the plan does not name its targets, any Trump Administration rules allowing nonbanks to avoid lending and investing in all of the communities they serve would also be reversed.

The plan also echoes the task force's recommendation to offer real-time payments through FedNow ([see FSM Report PAYMENT17](#)); in contrast to prior platform documents, neither a Fed-operated CBDC nor postal banking is mentioned. The Biden plan also reiterates that the Federal Reserve Act should be amended to mandate regular reporting on racial economic gaps and how it combats them, along with requiring efforts to increase Fed leadership diversity and at financial regulatory agencies. Additional calls today include the creation of a public credit reporting agency within the CFPB and rolling back any changes to HUD's proposed disparate-impact standard ([see FSM Report FAIRLEND6](#)).

HFSC Leadership Demands FHFA Capital-Rule Delay

Reflecting views recently expressed in letters to FHFA from both industry and consumer advocates, HFSC Chairwoman Waters (D-CA), Housing Subcommittee Chairman Clay (D-MO), and Rep. Heck (D-WA) today sent a letter [urging FHFA](#) to "pause" its [capital rule for Fannie Mae and Freddie Mac](#) and provide additional information on the implications for persons of color. The letter also requests a "detailed fair-lending analysis" of factors such as the number of borrowers who "will" be adversely affected by the new capital framework along with percentages of adversely-affected borrowers that are people of color and how mortgage costs will increase for whom. FHFA Director Calabria has to date stood by the August 31 comment deadline, one set with an eye to completing the capital rule necessary for near-term action also to end the GSEs' conservatorships. Noting that the rule includes comparisons to bank regulatory capital, the letter notes that many bank capital rules are issued for 120-day comment periods. No deadline is set for an FHFA response.

CFPB Considers AI, Disparate Impact, Financial Inclusion in ECOA Review

In lieu of a fall symposium, the CFPB [today](#) issued an RFI seeking comment on ways to prevent credit discrimination, encourage responsible innovation, promote credit access, and address regulatory uncertainty under its ECOA regulations. Taking on a range of very controversial issues, the CFPB seeks input on clarifying its approach to disparate impact analysis, facilitating non-

discriminatory use of AI/ML, and determining when ECOA preemption applies. The CFPB also seeks comment on promoting small business lending, encouraging the use of non-English languages, clarifying situations in which creditors consider public assistance benefits in underwriting decisions, and ways to promote ECOA Special Purpose Credit Programs. The Bureau also asks if its ECOA rules should be revised to encompass sexual-orientation and gender-identity discrimination. We will shortly provide clients with an in-depth analysis of this request; comment is due sixty days after *Federal Register* publication.

Recent Files Available for Downloading

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 or clients may obtain the reports/analyses by e-mailing 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

- **[GSE-072720](#)**: In recent in-depth analyses, we assessed the OCC's new valid-when-made doctrine and its latest proposal to define who is deemed a "true lender."
- **[PREEMPT34](#)**: As promised by Acting Comptroller Brooks, the OCC has quickly followed up its controversial valid-when-made rule with a proposal defining "true lender" to facilitate the partnerships between banking organizations and other financial companies sometimes called "rent-a-bank" charters.
- **[GREEN3](#)**: Building on its 2017 [climate-change disclosure work](#), the FSB issued what it describes as a "stocktake" – i.e., a survey combined with next steps – in this increasingly critical area.
- **[GSE-071720](#)**: A new Federal Reserve Bank of New York staff paper sheds timely light on the impact of foreclosure-mitigation efforts on long-term housing markets and household wealth.
- **[SBA39](#)**: In this report, we assess the financial policy implications of the wide-ranging House Small Business Committee hearing with Treasury Secretary Mnuchin and SBA Administrator Carranza.
- **[MORTGAGE117](#)**: In this report, we assess the HFSC Oversight and Investigations Subcommittee hearing on mortgage servicing.
- **[GSE-071520](#)**: FSOC has officially begun the activity-and-practice designation of the secondary-mortgage market foreshadowed [in FSOC's annual report](#).

- **TBTF23:** Moving cautiously to assess the extent to which large banks are no longer too big to fail (TBTF), the FSB has gone beyond a request for comment to a somewhat more specific solution that may lead to policy actions not yet spelled out for public comment in this report.
- **COVEREDFUNDS2:** The banking agencies, SEC, and CFTC have finalized a long-awaited, complex, and comprehensive proposal rolling back many of the restrictions on covered funds imposed in the 2013 rules implementing the Volcker Rule provisions of the Dodd-Frank Act.
- **GSE-070720:** In the final version of “Volcker 2.0,” the FRB, FDIC, OCC, SEC, and CFTC finalized a massive, controversial rewrite of the rules governing the funds which U.S. banks and foreign banks doing business here may hold, own, sponsor, or otherwise serve and even market across an array of asset classes.
- **DERIVATIVES36:** Reflecting strong industry pressure and growing concerns about market structure, the banking agencies have joined others with which they share jurisdiction to finalize proposed revisions reducing the capital cost of the 2015 margin rule for non-cleared derivatives.