



FedFin Weekly Alert

Monday, November 2, 2020

❑ RUSH TO JUDGMENT

All U.S. presidential-election years create significant suspense ahead of the November vote, followed by recalibrations and realignments of sometimes seismic proportions. This year is different – change this time will come with volcanic force because of the enormous differences between Messrs. Trump and Biden and the ferocity with which their supporters view their opponent. Knowing this well, Members of Congress and federal regulators are pressing actions that will advance their objectives if Mr. Biden prevails or send strong messages if Mr. Trump keeps the Oval Office. Actions so far and those to watch after Tuesday include:

- **Democratic Warning Shots:** These include sweeping legislation expressly expanding the Civil Rights Act to encompass a wide range of financial institutions and services ([see FSM Report FAIRLEND9](#)), a measure from Sen. Merkley (D-OR) mandating financial-institution fossil-fuel divestitures (see forthcoming in-depth report), and yet another proposal from Reps. Tlaib (D-MI) and Ocasio Cortez (D-NY) to set up public banks. As we noted Friday, this isn't a new idea – we've analyzed it in *EconomicEquality* blog posts going back to [2018](#). However, along with proposals to put the USPS into the banking business ([see FSM Report POSTAL9](#)) and create "Fed accounts" ([see FSM Report CBDC](#)), it's clear that Democrats plan to challenge the fundamental construct of U.S. retail finance.
- **New Rules:** We will shortly provide clients with an in-depth analysis of the final version of the OCC's controversial [true-lender rule](#). As we noted [this week](#), it was promptly followed by a threat from Senate Banking Ranking Member Brown (D-OH). He will launch a Congressional Review Act challenge to the rule and, if Democrats take the Senate and White House next year, he's likely to win, wiping this rule off the books. However, Acting Comptroller Brooks' action to finalize it now forces Democrats to divert attention from much else to override his actions and there's always the chance that, even if Democrats have a wide Senate margin and the White House, a Review Act resolution could falter. The SEC last week also finalized controversial derivatives rules for investment funds on a 3-2 vote and more initiatives along these lines will follow from the SEC, CFTC, CFPB (which just reorganized itself yet again), and the FDIC. The Fed is generally aloof from last-minute election-based shenanigans, but that may not be the case this time around given ongoing opposition by Gov. Brainard to several initiatives strongly favored by Vice Chairman Quarles.

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- **New Charters:** Although Congress can rollback new rules, it can't touch new charters without a change in law sure to be a hard sell at the start of a contentious new Congress and, we would guess, for a long time thereafter absent a financial crisis or scandal. Thus, charters granted now are comparative-advantage to companies for a long, long time to come. Knowing this full well, the OCC under Mr. Brooks is rushing out ground-breaking approvals such as the precedent-setting one for a crypto bank in Wyoming ([see FSM Report CRYPTO15](#)) and Thursday's [preliminary SoFi bank national bank charter](#). More are sure to come, perhaps up to and including the first of the payment charters [Mr. Brooks espouses](#). The FDIC may also advance more ILCs as well as finish its pending rulemaking on parent-company obligations ([see FSM Report ILC14](#)).

Karen Petrou's memo will resume on Friday, November 6.

Headlines From the Past Week's Daily Briefings

October 26

- **Nothing of note**

[October 27](#)

- **Court Order Halts Controversial HUD Disparate-Impact Reg** - A federal judge on the U.S. District Court for the District of Massachusetts has issued a [temporary injunction](#) prohibiting HUD from implementing its revised disparate impact treatment standard. ([see FSM Report FAIRLEND8](#)).
- **FHFA Confirms Strategic Plan Through 2024** - FHFA [finalized](#) its strategic plan for 2021-2024 as proposed, with its only change being a separate rulemaking now under way in response to comments on the plan asking for a revised new product approval process for Fannie Mae and Freddie Mac.
- **OCC Backs Down – A Bit – On True-Lender Obligations** - In a concession both to Democrats and the banking industry, the OCC's [final true-lender rule](#) revises a proposed approach ([see FSM Report PREEMPT31](#)) that critics argued encouraged rent-a-bank arrangements.

[October 28](#)

- **Brown Threatens True-Lender Rule Reversal** - Following OCC [release of its final true-lender rule](#), Senate Banking Ranking Member Brown (D-OH) [said](#) he would use every available legislative tool to overturn it.

October 29

- **OCC Continues National-Bank Charter Redesign** - The OCC [provided](#) preliminary approval to the fintech company SoFi to charter a national bank.
- **Agencies Advance Guidance Restraints** - Addressing longstanding industry grievances and following FDIC [approval](#), the federal banking agencies, NCUA, and CFPB [jointly](#) issued a proposal codifying their [2018 statement](#) on the role of supervisory guidance.
- **Support for Climate Disclosures Nearly Doubled in Last Year** - An industry-led group established by the FSB, the Task Force on Climate-related Financial Disclosures (TCFD), [released](#) its 2020 green-disclosure status report.
- **New York Sets First U.S. Climate-Risk Supervisory Standards** - As we noted in our new issue brief on [green financial regulation](#), federal officials are increasingly interested in standards reducing climate risk but remain reluctant to take affirmative action despite injunctions from the New York Fed ([see Client Report GREEN2](#)).
- **CFPB Limits Confidential-information Release** - Completing action begun in 2016, the CFPB [finalized](#) a rule governing how it will treat confidential information as required by Dodd-Frank.

October 30

- **True-Lender Rule Effective Before Year End** - The *Federal Register* [includes](#) the OCC's final true-lender rule, which generally preempts state usury ceilings and state consumer-protection standards.
- **Treasury, Fed Sweeten Main Street Lending Program** - Conceding to Congressional pressure from both sides of the aisle, Treasury has authorized the Fed to make changes to the Main Street Lending Program (MSLP) both agencies [announced](#).
- **Progressive Dems Renew Public-Bank Push, Turning Now to Fed Funding** - Continuing progressive Democrats' public-bank push, [legislation](#) from Reps. Tlaib (D-MI) and Ocasio-Cortez (D-NY) would significantly reduce barriers to opening and operating a public bank.
- **Tlaib Demands End to Fed Fossil-Fuel Support** - Continuing her critique of the Fed and Treasury's pandemic response ([see Client Report COVID15](#)), Rep. Tlaib (D-MI) [sent](#) a letter to FRB Chair Powell contending that the Fed has not only failed to help cities and municipalities, but instead "propped up" corporate polluters.

This Week

Monday, November 2

CFTC Open Meeting [9:30 AM via webcast] **Matters To Be Considered:** Final Rule: Amendments to Part 50 Clearing Requirement Exemptions for Central Banks, Sovereigns, IFIs, Bank Holding Companies, and CDFIs.

Wednesday, November 4

FSB Virtual workshop [8:00 AM] on the use of supervisory (SupTech) and (RegTech) regulatory technology by authorities and regulated institutions.

Thursday, November 5

FSB Virtual workshop [8:00 AM] on the FSB's work on the provision of financial services by BigTech firms in emerging market and developing economies.

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

- **[FAIRLEND9](#)**: Congressional Democrats have introduced legislation that formally expands civil-rights obligations to financial institutions.
- **[GSE-102820](#)**: This analysis builds on our [in-depth assessment](#) of the new inter-agency net stable funding ratio (NSFR) rule to highlight strategic implications for U.S. housing finance.
- **[LIQUIDITY32](#)**: After expectations that the U.S. might well not adhere to the Basel Committee's NSFR standards, the banking agencies have finalized their 2016 proposal, albeit in significantly revised form.
- **[GSE-102120](#)**: As we noted, African-Americans and Hispanics have a heck of a time enjoying the benefit of low mortgage rates despite like-kind default risk to white borrowers.
- **[PAYMENT21](#)**: The FSB and many other global bodies have finalized a vision of cross-border payments with far-reaching implications not only for payments, but also for personal privacy, regulatory arbitrage, the role of nonbanks, cross-border resolution, monetary-policy transmission, and financial stability.
- **[GSE-101520](#)**: Although direct mortgage discrimination based on race and ethnicity has abated in recent years, a new study from the Federal Reserve Bank of Boston shows a striking difference in prepayment rates due to refinancing-speed differences directly attributable to race and ethnicity after controlling for an array of well-accepted underwriting risks.

- **[CRA30](#)**: Following opposition to the OCC's CRA rewrite, the FRB has proposed an initial construct that takes some elements of the OCC's approach and adds further and in some cases different provisions to craft what the Fed hopes will become an inter-agency CRA construct in 2021.
- **[BIGTECH](#)**: Last week, the House Judiciary Antitrust Subcommittee released a lengthy, high-impact Democratic [report](#) calling for structural changes to the nation's biggest tech-platform companies.
- **[GSE-100920](#)**: As will soon be detailed in an our in-depth report, the Federal Reserve's long-awaited [CRA proposal](#) is a comprehensive rewrite that, while preliminary, would dramatically change large bank community-focused lending and investing.
- **[CORPGOV31](#)**: In this report, we analyze the strategic implications of enforcement actions against Citibank issued by the [Fed](#) and [OCC](#).
- **[CAPITAL226](#)**: In conjunction with numerous changes to its supervisory stress test (CCAR) for the largest U.S. banking organizations in response to COVID, the Federal Reserve is seeking comment on structural changes to current capital-planning requirements.
- **[GSE-100120](#)**: A troubling new IMF staff paper looks at U.S. housing policy since COVID to uncover some worrisome aggregate and distributional effects.
- **[CRYPTO15](#)**: Continuing Acting Comptroller Brooks' efforts to enhance innovation at national banks and federal savings associations, the agency has now authorized these institutions to hold reserves associated with certain stablecoin offerings.
- **[GSE-092820](#)**: Following its [morning meeting](#), FSOC released the staff [statement](#) expressing its near-term decision on systemic risk in the secondary mortgage market.