



FedFin Daily Briefing

Friday, December 18, 2020

Brainard Downplays Near-Term Climate-Risk Stress Tests

Gov. Brainard today [told a Democratic think tank](#) that climate risk poses significant systemic hazard, a point she emphasized when the central bank's most recent financial-stability report ([see Client Report SYSTEMIC89](#)) for the first time addressed climate risk.

However, Gov. Brainard also highlights the complexities of measuring and monitoring risk recently analyzed in a [FedFin issue brief](#), emphasizing the immediate need for comparable, transparent climate-risk disclosures. Scenario risk is another tool the Fed is beginning to develop, but Gov. Brainard notes the differences between these climate-risk scenarios and conventional stress tests. The Fed is thus also working on finance-specific risk measurement and modelling techniques, with a focus in particular on how long-term climate risks may affect near-term planning horizons. The Fed's climate-risk strategy is, thus, continuing engagement with other central banks, regulators, and financial institutions, not the near-term stress tests for which some Democrats have called. In this speech, Ms. Brainard also links climate risk to her ongoing work to rewrite the Community Reinvestment Act ([see FSM Report CRA30](#)), which seeks comments on how to incorporate climate-risk mitigation in LMI communities into the activities for which banks receive CRA credit.

Inter-Agency Computer-Security Notice Regs Reach the Cloud

Following FDIC board approval [earlier this week](#), the Fed and OCC [today](#) formally joined the FDIC to issue an inter-agency NPR requiring banking organizations to notify their primary regulator in the event of a computer-security incident. The proposal would require the reporting of any incident that could result in a bank being unable to deliver services to a material portion of its customer base, jeopardize the viability of its key operations, or impact financial stability. Notification would be required no later than 36 hours after the bank determines an incident has occurred. Additionally, service providers experiencing computer-security incidents that could impair services for at least four hours would need to notify affected banks immediately upon discovery. This cannot be done via direct application of these rules, but banks would need to ensure vendors comply with this requirement, effectively spreading the security-breach reporting mantle over cloud-service providers and other key infrastructure. Comments are due ninety days after *Federal Register* publication.

Toomey 13(3) Provision Limited to CARES Facilities

Scanned images of the Toomey language blocking further Fed 13(3) [facilities](#) suggests that the language does not, as some reports have suggested, broadly rewrite the Fed's emergency powers. Instead, the measure expressly bans further CARES facility commitments after December 31 with a limited window thereafter for the Main Street program or any programs that are functionally similar to the CARES facilities. This would bar the Biden Administration Treasury from using current ESF funds to restart facilities such as the one for municipalities or corporate credit. The scanned image we have seen does have drafting errors that suggest it may be preliminary. If language along these lines ends up in the Senate bill but then is not enacted into law, it could actually lead the Biden Administration to assert with still more force that current law allows continuing CARES-authorized facilities and revisions to them.

OCC Extends Preemption Mantle

Continuing its strong stand on federal preemption, the OCC today [issued a letter](#) detailing the standards it uses for preempting state and local law, focusing on consumer-protection and interest-rate law and extending the preemption mantle still more explicitly to cover subsidiaries and address visitorial powers. The letter thus provides a detailed legal rationale backing the new rules on the valid-when made doctrine ([see FSM Report PREEMPT33](#)) and true-lender test ([see FSM Report PREEMPT35](#)), giving federal charters and their partners legal guidance as to likely OCC interpretations of complex preemption decisions. The OCC earlier this year stirred considerable [controversy](#) when the Acting Comptroller barred federal charters from complying with state and local COVID borrower-protection and branch-closing orders, but the letter emphasizes the agency's right to do so under laws cited and the agency's interpretations detailed in the letter. The letter also reiterates that the OCC does not need an express federal preemption in law to exercise its preemptive powers.

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

- [CONSUMER36](#): On Monday, the Biden transition released a readout of a meeting between Treasury nominees Janet Yellen and Wally Adeyemo with various racial-equity associations, reinforcing the importance this issue will have in crafting financial regulation in the Biden Administration.
- [GSE121720](#): FHFA's controversial [capital rule](#) is in today's *Federal Register*, setting an effective date of February 16.
- [GSE-121620](#): Secretary Mnuchin's comments yesterday make it clear – at least mostly – that Fannie and Freddie will remain in conservatorship as the Biden Administration takes charge.
- [REFORM200](#): In this report, we continue our 2021 forecasts, moving from our assessment of digital finance ([see Client Report DIGITAL6](#)) and asset-management regulation ([see Client Report RECOURSE6](#)) to an assessment of the U.S. capital and liquidity framework for large banks and FBOs.
- [RECOURSE6](#): In this report, we assess the regulatory consequences of one of the ironies of March's market turmoil: among the reasons it was not worse is because some large banks stepped in and backed customers or investors despite the lack of any legal obligation to do so.
- [CHARTER28](#): Continuing Acting Comptroller Brooks' policy of considering [precedent-breaking applications](#) and [charters](#), the agency has received a controversial [application](#) from Figure to establish a national bank that, by virtue of this charter, would also be a Fed member.
- [GSE-120720](#): The last Trump FSOC [annual report](#) reiterates 2019's [findings](#): nonbank originators and servicers are weak and interconnected, thus posing systemic risk.

- **DIGITAL6**: Even though 2020 was of course preoccupied by the pandemic, there was no scarcity of the oft-repeated nostrum that law and rule must define the future of digital finance.
- **CHARTER27**: In conjunction with a wide-open request for views on ways to increase the innovativeness of national banks and federal savings associations (FSAs), the OCC has finalized a significant rewrite of their more traditional powers and activities.
- **GSE-120220**: Today's House Financial Services session with Mnuchin and Powell shed just a bit more light – or provided still more uncertainty – on the critical question of whether Treasury will work with FHFA to end the conservatorships before the Biden Administration surely keeps them for a long, long time.
- **GSE-120120A**: At today's Senate Banking hearing on the CARES-funding fracas, Secretary Mnuchin told Sen. Rounds (R-SD) that the GSEs should be quickly brought out of conservatorship but that they will not be let out without sufficient capital.
- **GSE-120120**: Given the high confirmation odds for Janet Yellen as the nation's next Treasury Secretary, we here assess her impact on the future of U.S. housing finance.
- **ESG3**: Following through on one of his pledges, Acting Comptroller Brooks' agency has issued a controversial proposal to prevent large banks and perhaps all federally-chartered ones from deciding whether or not to grant credit on grounds other than clear, quantitative indicators of ability to repay.
- **GSE-112420**: Building on our analysis of the overall final FHFA [capital rule](#), we turn here to an assessment of the rule's strategic impact.
- **GREEN5**: In its latest report on climate risk, the Financial Stability Board reiterates the complexity of measuring financial-system climate risk, continuing its work to enhance the ability of regulators and financial institutions to do so due to the magnitude both physical and transition risks are likely to pose.
- **GSE-112320**: In this report, we build on our initial summary of FHFA's [final capital construct](#) to assess one of the most important issues on which FHFA made at least some concessions.
- **GSE-111920**: On Monday, [we reiterated our call](#) that FHFA would move the capital rule ASAP and then end the conservatorship as quickly as possible under terms and conditions designed to make it challenging for the Biden Administration to unravel a fait accompli.
- **GSE-111820**: In its [2020 systemic-risk assessment](#), the Office of Financial Research takes unusual issue with GSE CRT transactions.
- **SYSTEMIC90**: The Office of Financial Research's latest [systemic-risk assessment](#) reiterates much of the market analysis in the FRB's recent report ([see Client Report SYSTEMIC89](#)), the FSB's analysis ([see Client Report NBF1](#)), and the OCC's [risk matrix](#).
- **NBF1**: As promised again just [last week](#), the Financial Stability Board [today released](#) a "holistic" plan for dealing with NBFIs along with an ambitious agenda for global standards as soon as next year.
- **GSE-111620**: Responding to your requests, this report summarizes and expands on the post-election outlook for U.S. housing policy we've also discussed with many of you since November 3.

- [RESCUE78](#): Today's HFSC hearing with federal regulators addressed some of the same ground as the Senate's session earlier this week ([see Client Report RESCUE77](#)), although Acting Comptroller Brooks did not come in for the shellacking on his innovative charters delivered by Senate Democrats

- [RESCUE77](#): At its first hearing following last week's election, Senate Banking today heard testimony from the federal prudential regulators which largely covered ongoing efforts to combat the COVID pandemic's impacts on the financial system.