FedFin Daily Briefing

Monday, December 21, 2020

FinCEN Takes Urgent Action on VC, Digital Asset Reporting

Taking urgent action due a national-security emergency rising to Secretary Mnuchin's level, FinCEN late Friday proposed to require banks and money service businesses (MSBs) to submit reports and verify the identity of customers for transactions involving convertible virtual currency (CVC) or digital assets with legal-tender status held in unhosted wallets in all jurisdictions and for hosted wallets in a financial institution not subject to the BSA that is located in certain foreign jurisdictions (now Burma, Iran, and North Korea). CVCs are any medium of exchange that either has an equivalent value as currency or acts as a substitute for currency but lacks legal tender status. Covered transactions requiring reporting would be those greater than $10,000 and multiple CVC transactions of more than $10,000 in aggregate over a 24-hour period would be covered as one transaction. Reports would be due to FinCEN within fifteen days; recordkeeping would be required for covered transactions greater than $3,000. Comments are due January 4, with the NPR indicating the short comment period is warranted due to national-security imperatives and also noting notice-and-comment rulemaking requirements are technically inapplicable because the proposal involves a foreign-affairs function.

Stimulus Salvages Fed Emergency Authority

The text of the stimulus bill is now available, allowing us to assess the final version of the contentious Toomey language that stalled final action. The final text continues to bar CARES facilities after December 31, now clearly doing so without also limiting the Fed's or Treasury's ability to use ESF funds for other 13(3) facilities (e.g., for MMFs, PPP liquidity) or new backstops as long as these do not use CARES-authorized Treasury funds. In fact, the bill expressly reinforces the Fed's current 13(3) authority (see FSM Report **RESCUE70**). The language also makes clear now that the Fed may modify or restructure outstanding loans, securities, or other assets under CARES facilities as long as this is an obligation-by-obligation, counterparty-by-counterparty process that reduces taxpayer costs by averting default.

CFPB Clears Way for Targeted Credit Programs

Continuing to issue opinions under its new advisory opinion policy, the CFPB today clarified that it does not constitute discrimination under ECOA for a creditor to refuse to extend credit offered pursuant to a legal special purpose credit program (SPCP). The agency released this advisory because many commenters on its sweeping request for views on ways to enhance non-discriminatory credit availability (see FSM Report **FAIRLEND7**) expressed uncertainty about facilities that have become far more common in recent months to address racial-equity concerns. Under the advisory, for-profit organizations offering or participating in SPCPs are required only to have and meet a written plan identifying the class of persons sought and setting out procedures for extending credit. The class of persons for which the program is designed must be one that would be unlikely to receive credit or receive it on less favorable terms than ordinarily available to other applicants under the organization's usual creditworthiness standards. The policy is effective upon *Federal Register* publication.

Stimulus Renews TDR Relief

In addition to the 13(3) compromise noted in a prior alert, the fiscal-stimulus bill also extends CARES troubled debt restructuring (TDR) provisions and expressly applies them to insurers. The new TDR relief is generous, extending through all of 2021 despite fears (see *Client Report* **RESCUE78**) that prolonged TDR relief could lead to costly losses if loans or other exposures that are unlikely to recover are simply extended to "zombie" borrowers. However, statutory TDR relief was necessary to avoid near-term loss-recognition that could exacerbate distress for borrowers likely to regain repayment capacity and increase capital and provisioning pressures that would reduce recovery-essential finance.

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

- **ILC15:** Setting the stage for new charters and legislative battles in 2021, the FDIC has finalized a controversial proposal addressing source-of-support and certain other obligations for the parent companies of some industrial banks and industrial loan companies (ILCs).

- **GSE122120**: As previously noted, FHFA late last week issued a long-promised proposal implementing LCR- and NSFR-like – but not light – rules for Fannie Mae and Freddie Mac.

- **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.

Federal Financial Analytics, Inc.
2101 LStreet, N.W. – Suite 300, Washington, D.C. 20037
Phone (202) 589-0880
E-mail: info@fedfin.com www.fedfin.com

- **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 **NBFI**), and the OCC's risk matrix.

- **NBFI**: 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.

Federal Financial Analytics, Inc.
2101 LStreet, N.W. – Suite 300, Washington, D.C. 20037
Phone (202) 589-0880
E-mail: info@fedfin.com www.fedfin.com

- **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.

Federal Financial Analytics, Inc.
2101 LStreet, N.W. – Suite 300, Washington, D.C. 20037
Phone (202) 589-0880
E-mail: info@fedfin.com www.fedfin.com