



# FedFin Weekly Alert

Monday, April 19, 2021

## ❑ CHARTER WARS

As we noted last week ([see Client Report ILC16](#)), House Financial Services Committee Democrats have now made it more than clear that they plan this year to pursue legislation to clip the wings of all of the non-traditional charters not moved outside their reach by OCC and FDIC actions during the Trump Administration. This we predicted ([see Client Report ELECTION25](#)) and so it will come to pass along with opposition by many Republicans. Once upon a time, charter wars were a wholly nonpartisan – if pitched – battle due to the strong, pervasive power of community bankers and pockets of counter-pressure from a few states and powerful companies. When the voting begins on the charter restrictions previewed [ahead of the hearing](#), partisanship may well give way to agreement, agreement made still more probable by the entry of big banks into a fray once solely consigned to community bankers. But, before the voting begins, hearings continue. Critical questions ahead of focused legislative action include:

- **Moratoria:** The extent to which Congress now is willing to impose another three-year moratorium is most uncertain. This made it into Dodd-Frank in 2010 largely thanks to Walmart ([see Client Report FHC16](#)). But, even with Walmart's renewed banking ambitions, we think Congress this time won't just stick another big finger in the crumbling dike between banking and commerce. Legislation to craft a new charter framework will advance or, as before, the market will do it for Congress.
- **Parent-Company Regulation:** HFSC has stated that it plans to consider not just another moratorium, but also a new version of legislation introduced in the last Congress ([see FSM Report ILC13](#)) by Rep. García (D-IL). It goes considerably farther than the FDIC's new rule seeking to ensure that ILC parents are trustworthy sources of strength for insured depositories ([see FSM Report ILC15](#)) and stands a good chance of passage once Members of Congress decide if they want to limit the bill to FDIC-regulated charters of the nontraditional persuasion or – as discussed last week – make it a condition also for any more special-purpose charters from the OCC.
- **True-Lender Obligations:** Former Acting Comptroller Brooks strongly defended his true-lender rule ([see FSM Report PREEMPT35](#)) at Thursday's hearing, but found no Democratic takers. Earlier this year ([see Client Report CONSUMER36](#)), we said that the OCC under most Comptrollers likely to be both appointed and confirmed will hue to the agency's long proclivity for expansive federal

preemption. That said, the agency is likely also to reopen the rule, going beyond Mr. Brooks' assertions that it imposes like-kind rules on companies that "partner" with banks, but also enforceably and expressly does so.

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## Headlines From the Past Week's Daily Briefings

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### April 12

- **FSB Heightens Focus on Market Transparency** - As Archegos focuses global regulatory attention on market opacity, the FSB issued FAQs on the STF data standards developed as part of its framework addressing securities financing's financial stability risks.
- **Boston's Rosengren Presses for CCyB** - Following remarks from FRB Vice Chair Quarles questioning the CCyB's effectiveness, Boston Fed President Rosengren argued that it is preferable to disrupting bank capital planning and relying on temporary capital relief in downturns.

### April 13

- **Waters Presses Funds to Speed Beneficial-Ownership Implementation** - Advancing the banking industry's efforts to get rapid FinCEN action, HFSC Chairwoman Waters (D-CA) demanded greater funding for FinCEN to support rapid implementation of new AML beneficial-ownership law.
- **Global Body Presses Green Stress Testing, Capital, Penalties** - A climate-change advocacy group comprised, among other members, of some central banks and regulators, issued a report outlining regulatory policies designed to reduce risk and global warming.
- **HFSC Preparing Infrastructure Bank, Downpayment Assistance Proposals** - As anticipated, HFSC announced that its full committee hearing will consider legislation creating an infrastructure bank modelled on the New Deal-era Reconstruction Finance Corporation.
- **Senate Banking Previews Anti-Discrimination, Credit-Score Reforms** - Continuing Chairman Brown's (D-OH) prioritization of Senate Banking's housing jurisdiction, the committee held a hearing focused on racial discrimination in housing, emphasizing the federal legacy of housing discrimination and the need for greater rates of home ownership.
- **CFTC Updates Bankruptcy Rules Ahead of Global CCP Work** - Acting emphatically on FSB work to enhance CCP resolvability, the CFTC has finalized its rule revising its bankruptcy regulations for futures commission merchants and clearing organizations.
- **Warren, Smith Press DOL Ban as Enforcement Action** - Using their new power to make a still more emphatic point about enforcement, Sens. Warren (D-MA) and Smith (D-MN) demanded that the Labor Department's Employee Benefits Security Administration (EBSA) rescind its proposed five-year exemption allowing Goldman Sachs to retain its qualified professional asset manager (QPAM) status.

## April 14

- **HFSC Prioritizes ILC-Charter Constraints** - Advancing the chairwoman's effort to constrain non-traditional bank charters, HFSC's Consumer Protection and Financial Institutions Subcommittee will consider two draft bills to limit ILC charters.
- **HFSC Prepares LIBOR-Transition Fix** - HFSC's Investor Protection, Entrepreneurship, and Capital Markets Subcommittee will take up federal legislation to improve the LIBOR transition, focusing on a measure to address prior contracts without sufficient fallback language or an alternative contractual rate.
- **Basel: More, Better Data Needed to Quantify Climate Risk** - The Basel Committee issued two reports on climate financial risk, concluding that climate-risk drivers can be captured in traditional financial risk categories but data gaps and general uncertainty still bar robust quantification.
- **Gensler Gets the Go-Ahead** - As anticipated, the Senate confirmed Gary Gensler to head the SEC by a contentious 53-45 vote.
- **Waters Presses Affordable Housing, Infrastructure Bank** – HFSC's full committee hearing on financial infrastructure focused primarily on public housing and Republican opposition to President Biden's infrastructure plan.

## April 15

- **Russian Sanctions Heighten FBO Risk** - Declaring that recent Russian actions have created a national emergency, President Biden took a step well beyond often-ineffectual personal sanctions to expand prohibitions related to financial institutions doing business in the U.S. from providing primary-market services in ruble or nonruble obligations issued after June 14 by Russia and certain sovereign affiliates.
- **FRB-NY Notes Downward Rate Pressure, Fed Reaction** - Noting that reserves at the Fed have grown to unprecedented levels banks will seek to manage or even reduce, FRB-NY executive vice president Lorie Logan presented an array of challenges to maintaining the rate floor but expressed strong confidence that the FOMC has the tools with which to do so.
- **Waters Reiterates Demand for Fed Racial-Equity Mandate** - HFSC Chairwoman Waters has now reintroduced legislation to impose a racial-equity mandate on the Fed also advocated by President Biden during the campaign.

## April 16

- **Fed Study: Banking Rules, System Pass COVID's Stress Test** - Stating not unreasonably that the pandemic provides the first stress test of the post-2008 crisis, a massive new Federal Reserve staff study finds that U.S. banks were well-insulated from risk but did not use their resources to ensure ongoing macroeconomic activity in part because the PPP, credit-line drawdowns, nonbank lending, and reduced demand alleviated the need for additional commitments.
- **Gillibrand, AOC Press for Postal Banking Pilot** - Pursuing a goal also endorsed by President Biden [during his campaign](#), Congressional Democrats including Sen.

Gillibrand (D-NY) and Rep. Ocasio-Cortez (D-NY) [demanded](#) that funds for a postal banking pilot be included in the FY22 appropriations package.

- **Basel: Near-Term Work Focused on COVID, Crypto, Climate** - The Basel Committee [published](#) its work program and strategic priorities for 2021-22, laying out in general terms its work to support recovery and prepare for future risks.

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## This Week

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**Tuesday, April 20**

HFSC Hybrid Mark-up [10:00am]

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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 [info@fedfin.com](mailto:info@fedfin.com) giving the requested item name, firm, and e-mail address. To learn more about *GSE Activity Reports*, click [here](#).

- **[LIBOR5](#)**: Following Fed agreement earlier this year that federal legislation is needed ([see Client Report FEDERALRESERVE61](#)), the HFSC Capital Markets Subcommittee today laid the groundwork for rapid introduction and action on Chairman Sherman's draft bill.
- **[ILC16](#)**: As anticipated, HFSC Democrats today continued their attack on non-traditional bank charters, with Chairwoman Waters (D-CA) pushing for no new ILC approvals and revoking the OCC's special-purpose charters.
- **[GSE-041421](#)**: A new study from the Federal Reserve Bank of New York contradicts many assertions that COVID's mortgage-market mania disadvantages first-time homeowners.
- **[INFRASTRUCTURE7](#)**: Sen. Joe Manchin (D-WV) recently reiterated that he believes an "infrastructure bank" would be an appealing way to fund significant U.S. investment without the direct cost associated with President Biden's plan.
- **[GSE-040621](#)**: Just to be sure servicers got the message sent last week that the CFPB has them in its [crosshairs](#), the agency yesterday [proposed](#) sweeping changes to provide far-reaching foreclosure protections on all forbore or delinquent mortgages, not just those subject to the statutory protection afforded federal loans.
- **[AI](#)**: Advancing their efforts to ensure "responsible innovation," federal agencies have taken an initial, cautious step into assessing the prudential, compliance, risk-management, and fairness implications of artificial intelligence (AI) and machine learning (ML).
- **[HEDGE59](#)**: The stunning collapse of the leveraged family office, Archegos, and its impact on the financial system has renewed calls for an array of regulatory initiatives.

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