



FedFin Daily Briefing

Wednesday, May 12, 2021

True-Lender Rule Advances to Substantive Rewrite

The Senate last night voted 52-47 in favor of a CRA resolution overturning the OCC's true-lender rule ([see FSM Report PREEMPT35](#)), sending the resolution now to the House for likely passage given the bipartisan nature of the Senate's vote. The White House [yesterday](#) issued a Statement of Administrative Policy indicating that President Biden will sign the resolution. As with many votes in which large and small banks agree and where states' rights are involved, the fact that consumer advocates also strongly opposed the true-lender rule complicated Sen. Toomey's (R-PA) to rally solid GOP opposition to this Democratic initiative. Assuming the Review Act resolution is enacted, Acting Comptroller Hsu will need to either scuttle the rule in its entirety or issue a new version that must not be "substantially similar" to the repealed rule under terms of the Act. Earlier this year ([see Client Report CONSUMER36](#)), we anticipated that the OCC would in fact do so regardless of Congressional action, preserving federal preemption as long as a national bank generally has a substantial interest in a loan and that all terms and conditions meet those that would be required of the bank itself.

Rosengren: CBDC Work Advancing, May Complement FedNow

The *Federal Register* [today includes](#) the Fed's proposed guidelines to evaluate requests for accounts and services. As detailed in our in-depth report ([see FSM Report PAYMENT22](#)), it could open payment-system eligibility to non-traditional charters, preempting alternative payment systems and cementing Fed control. It would have far-reaching strategic and structural implications for legacy banks, tech-platform companies, and U.S. financial markets. Comment is due July 12.

Williams: SOFR First, Alternative Benchmarks to Come

Boston Fed President Rosengren [today](#) updated Fed work with MIT on CBDC, signaling significant progress even though the FRB has yet even to, as Chairman Powell might say, start thinking about thinking about creating a U.S. CBDC. The Boston Federal Reserve Bank will issue a white paper with MIT in the third quarter documenting CBDC's ability to meet reasonable goals with core processing. They will also create an open-source license for the code. Following release, the joint Boston Fed/MIT initiative ("Project Hamilton") will turn to additional CBDC requirements such as resiliency, privacy, and AML compliance. Project Hamilton will also consider how a central-bank CBDC compares to private-sector digital currency platforms now under construction as well as to open-source options. Cementing the link between CBDC and the payment system of importance also to the pending access proposal ([see FSM Report PAYMENT22](#)), Mr. Rosengren ties work on CBDC to FedNow because both require many of the same Fed resources, with significant aspects of both systems possibly able run on the same payments backbone.

Brown, Toomey Preparing Broad China Sanctions Bill

Continuing Congress's use of sanctions as a tool of U.S. foreign, human-rights, and economic power, Senate Banking Chair Brown (D-OH) and Ranking Member Toomey (R-PA) [today](#) agreed in principle on legislation they will offer as an amendment to a broader package on China set for near-term Senate consideration. The measure would mandate new sanctions against Chinese entities to combat cyber-attacks and theft of trade secrets or IP. It would also urge the Administration to increase existing sanctions against China in response to human rights abuses and forced labor, Hong Kong, economic espionage, fentanyl production and

distribution, illicit trade with North Korea, and other challenges. An interagency task force on Chinese market manipulation would also be required along with a report on U.S. exposure to the "Chinese financial systems" and an investigation into ways in which U.S. taxpayers may be unwittingly providing assistance via the Ex-Im bank to Chinese state-owned enterprises engaged in misconduct. A report is also required on investment reciprocity between the U.S. and China. We will advise clients as this bill advances and its impact at a time of heightened focus on sanctions compliance ([see FSM Report AML133](#)).

New House Disclosure, Fair-Lending Bills Set to Advance

Although recorded votes will take place later tonight, it seems likely that the HFSC bills on which action was incomplete earlier today will be decided on party-line votes. Republicans strongly objected to revised bills H.R. 1188, H.R. 2570, and H.R. 3007 which would require new SEC disclosures on employee-pay increases, climate risk, and company profits and taxes, proposing in each case a significant materiality amendment limiting the likelihood of any such disclosures. Democrats strongly objected, and these materiality provisions are thus likely to be defeated when voting begins. Rep Green's (D-TX) H.R.166, which would create a CFPB office of fair lending, expand ECOA scope to many new protected classes, and impose criminal penalties, is also set for recorded vote, although Members offered no amendments to it. However, Rep. Garcia's (D-TX) H.R. 3009, which would establish standards for mortgage creditors and servicers to serve those with limited English proficiency, is subject to an amendment from Rep. Loudermilk (R-GA) to require the CFPB to provide interpreters as well as eliminate any remaining lender or servicer liability. Rep. Torres' (D-NY) H.R. 1443, which would expand ECOA to cover LGBTQ-owned businesses, was agreed to by voice vote.

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

- [GSE-051221](#): A new [Fed staff paper](#) sharply questions an axiom of mortgage securitization: the sanctity of the TBA market.
- [SYSTEMIC91](#): In this report, we assess the details of the Fed's most recent financial-stability report, focusing on policy and regulatory ramifications with near-term strategic impact.
- [GSE-051021](#): As detailed in a [new FedFin report](#), the Fed's proposal to open payment-system access is far from the technicality many nonbankers take it to be.
- [PAYMENT22](#): When the Fed announced its new instant payment system in 2020, it made it clear that access would be limited to traditional insured depository institutions (IDIs) and ever since has shown no public inclination to open the system.
- [INVESTOR7](#): Today's HFSC hearing on the lessons of GameStop featured SEC Chairman Gensler for his first Congressional appearance in this new role and, as detailed in this report, a lengthy list of initiatives now under way at the Commission not only on equity-market trading integrity and systemic risk, but also Archegos and digital currency.
- [GSE-050521](#): Ahead of possible systemic designation for Fannie and Freddie, FHFA is barreling through the systemic rulebook, finalizing [capital rules](#), proposing [liquidity standards](#), and, now, [finalizing](#) living-will requirements to ensure orderly GSE resolution under even acute stress.

- **[GSE-050321](#)**: The month of May may not be merry in Washington, but it's always consequential. Legislation with any serious hope of success in this session of Congress should be showing signs of determined life by now under ordinary circumstances.
- **[GSE-043021](#)**: Earlier today, we provided clients with an [in-depth analysis](#) of sweeping progressive legislation revising both the Community Reinvestment Act and the duties of lenders, servicers, the GSEs, and FHA with regard to loan modification and asset dispositions.
- **[PREEMPT36](#)**: At today's Senate Banking hearing, Democrats strongly objected to the OCC's True Lender rule, arguing it supports rent-a-bank schemes based on preemption of state usury and consumer-protection law.
- **[GSE-042821](#)**: As we [anticipated](#), FHFA today [announced](#) a new refi product aimed at increasing the benefits of ultra-low rates for under-served borrowers and, we would guess, also distracting political attention from the continuing contretemps over [investor-property limitations](#).
- **[DIVERSITY2](#)**: The House Financial Services Committee has approved legislation intended to force federal examiners to hold banks accountable for their diversity and inclusion efforts.
- **[LIBOR5](#)**: Following Fed agreement earlier this year that federal legislation is needed, 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.