



FedFin Daily Briefing

Monday, May 17, 2021

Fed Adopts Cautious Approach Despite PNC/BBVA Approval

Although the Federal Reserve Board [late Friday](#) announced approval of PNC's acquisition of BBVA USA, Gov. Brainard [abstained due to concerns](#) about growing concentration in the large-regional sector and potential systemic risk. This echoes longstanding Democratic concerns sure to be voiced when Vice Chairman Quarles comes before HFSC later this week. Surprisingly, Mr. Quarles' [statement](#) justified his vote in support of the transaction by saying first that he deemed it consistent with the bank-merger framework as dictated by Congress; this is likely to be an effort to deflect any blame HFSC Democrats seek to assign to the Fed back to Congressional statutory stipulations. Gov. Bowman has [previously said](#) that the Fed's own antitrust framework is behind the times, focusing in particular on fintech and not making it clear if her fears extend also to regional-bank mergers. Mr. Quarles also went on to say that he also deemed it consistent with financial stability and warranted by the bank's CRA record and increased competition. Progressives will surely dispute all these findings, an issue also under review in the continuing review of how antitrust considerations come into play for bank mergers ([see Client Report MERGERS5](#)). We will be providing clients with an in-depth report on the HFSC hearing, also tracking developments related to bank mergers as they arise.

HFSC Prioritizes True-Lender Action; Interchange, Payment Proposals Also on Radar

Ahead of HFSC's [hearing](#) this Wednesday with FRB Vice Chair Quarles and the heads of the OCC, FDIC, and NCUA, the [committee memo](#) features consideration of a resolution to nullify the OCC's controversial true-lender rule ([see FSM Report PREEMPT35](#)), positioning it for rapid HFSC action ahead of floor consideration and likely passage. The House resolution is identical to the Senate resolution which passed, readying it for signature by President Biden and then a decision by Acting Comptroller Hsu about how best to proceed. Mr. Hsu will be closely questioned on this point at the hearing; an in-depth FedFin report will follow. Reflecting Gov. Brainard's statement noting the benefits of counter-cyclical capital buffers last week ([see Client Report SYSTEMIC91](#)), the memo also includes draft legislation that would require the Fed to activate the CCyB for the largest banks when the FOMC increases interest rates. Amid an array of financial access and diversity bills, the committee memo also notes the OCC's CRA and "Fair Access" rules and the Fed's recent NPR to clarify interchange routing requirements. In addition to cryptocurrency oversight and algorithmic accountability issues, the memo also highlights fintech charters and bank partnerships following last month's HFSC hearing on ILCs ([see Client Report ILC16](#)), citing a recent Fed proposal regarding payment-system access ([see FSM Report PAYMENT22](#)) and prior action by the OCC authorizing [national trust charters](#).

FHFA Stands Firm Against More CRT

FHFA today issued its annual report on GSE [credit-risk transfers](#), providing an array of data on the market from February 2020 to February of this year. During this period, FHFA also finalized its controversial [capital rule](#), a rule taking a considerably more conservative approach to CRT. This, combined with risky off-market behavior, contributed to a sharp decline in CRT transactions over this period in concert with FHFA's growing concern about CRT's net benefit to the GSEs and mortgage market. There is no indication in the report that FHFA is rethinking its cautious approach to CRT despite pressure from Congress to do so ([see Client Report MORTGAGE119](#)). Indeed, its conclusions about CRT's costs, risks, and fragility make it clear that FHFA is wholly unmoved by industry or GSE arguments; a forthcoming FedFin in-depth report will assess this in more detail.

Agencies Defer Action on AI Assessment

The banking agencies today [announced](#) that they will extend the comment period on their joint RFI on AI ([see FSM Report AI](#)) until July 1. As noted in our in-depth report, the RFI poses general questions about AI/ML use in financial services, focusing on risk management, consumer protection, fair lending, and opacity. This is a cautious approach to subsequent rulemaking we believe the agencies will pursue later this year even if Congress does not demand this via the new law also taking its first steps forward in the new session ([see Client Report AI2](#)).

FDIC Begins Review of Digital Asset Landscape

The FDIC [today](#) issued an RFI on digital assets, laying out uses and seeking comment on IDI activities – current or contemplated – and future demand. Identification of the entities that may potentially be large drivers of such services is also requested. Further questions concern risk and compliance management, with the FDIC focusing on the extent to which existing frameworks account for various digital asset use cases. It also asks about benefits and risks unique to digital assets and how IDIs would integrate digital-asset specific operations into large banking systems and cybersecurity. Commenters are also asked to identify any aspects to which supervisors should pay particular attention as well as areas where additional guidance is warranted. Questions regarding deposit insurance and digital assets are also posed, including whether steps should be taken to ensure customers can distinguish between uninsured digital assets and insured deposits. This last question targets an area of growing FDIC concern about consumer understanding of insured-deposit status ([see FSM Report DEPOSITINSURANCE112](#)) Comment is due July 16.

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](#).

- [DEPOSITINSURANCE112](#): Although federal law expressly bars misrepresentation of FDIC-insurance status, the FDIC has observed increasing instances that might at the least be described as confusing, many of which led to informal enforcement actions.
- [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.