



FedFin Client Report

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Banking Agencies Detail Plans for Controversial Rules, Charters, Risks

Client Report: REFORM205

Executive Summary

Although the banking agencies today tried to make as little news as possible in their appearance before the House Financial Services Committee, Members made it hard for them to leave the witness table without providing important insight into regulatory policy as a new agency line-up takes shape. In this report, we assess key issues, spearheaded by Chairwoman Waters' (D-CA) opening statement announcing that House action revoking the OCC's true-lender rule will, as we [forecast](#), proceed as quickly as possible. The chairwoman was also harshly critical of efforts she believes under way at the Fed to weaken bank-merger review, citing Gov. Brainard's objection to the [PNC/BBVA merger](#) as a problematic case in point. She also pressed for an end to any pandemic-necessitated regulatory exemptions, likely targeting ongoing SLR review. Republicans reserved most of their firepower to attack actions by the agencies that they believe smack of "cancel culture" by way of favoring or opposing key economic sectors; agency heads strongly defended their objectivity, with FRB Vice Chairman Quarles going farther to say that the Fed is doing no additional work on climate change (a surprising point of view given a new office in this area and various working groups focused expressly on climate risk). Acting Comptroller Hsu laid out a new vision for the OCC, saying that the Brooks rule seeking what he called "fair access" ([see Client Report ESG3](#)) is on indefinite hold and taking a noncommittal stand on any further non-traditional or crypto charters.

Analysis

Opening Statements

As noted, Chairwoman Waters laid out a range of major concerns, with agency diversity also mentioned as a top priority. Ranking Member McHenry (R-NC) criticized the Biden administration for its delay in picking a permanent OCC

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Comptroller, also stating that fintech can be used to close banking deserts and bank the unbanked and praising the true-lender rule.

Consumer Protection Subcommittee Chair Perlmutter (D-CO) highlighted recent volatility and “recklessness” in the financial system, citing Archegos and GameStop. Ranking Member Luetkemeyer (R-MO) noted that the rise of fintech raises questions about the chartering of financial institutions, the true lender of a loan, and whether these entities should be federally regulated.

Testimony

Acting Comptroller Hsu's statement detailed a wholly new set of agency priorities that echoed much in yesterday's [risk assessment](#). These include not only combatting risk complacency (now specifying his concerns are targeted at large banks), but also reducing inequality (here emphasizing the need to revise the CRA, fair-lending enforcement, battling bias in appraisals, and encouraging BankOn and similar accounts as well as new credit-underwriting practices). The OCC is now also prioritizing adapting to digitalization, making it clear that Mr. Hsu shares banking concerns about shadow charters but emphasizing the need to develop a new policy in concert with other agencies and stakeholders. Finally, Mr. Hsu's top goals include addressing climate risk, but he also makes it clear that considerable research is required before new policy advances.

Vice Chair Quarles' written and oral testimony strongly defended recent FRB actions, including stress testing and the resulting decision to allow capital distribution. He also reiterated his commitment to sound finance in concert with other agencies and global bodies. FDIC Chair McWilliams' testimony detailed many past actions. NCUA Chair Harper urged Congress to consider legislation to provide the NCUA with examination and enforcement authority over third-party vendors, greater authority to proactively manage the share insurance fund, and permanently adopt the temporary enhancements granted to NCUA's Central Liquidity Facility in the CARES Act.

Q&A

- **Cryptocurrency:** Rep. Green (D-TX) raised concerns about regulating cryptocurrencies, asking if they should be declared unconstitutional or banned; Mr. Quarles noted that the Fed is in the process of developing a regulatory framework for cryptocurrencies. Rep. Gonzalez (R-OH) worried that CBDC delays might affect the dollar's reserve-currency status; Mr. Quarles does not believe that the U.S. is falling behind China or that the dollar as reserve currency will be affected. Rep. Foster (D-IL) emphasized the need for a secured digital identity. Rep. Emmer (R-MN) praised the OCC for its clarification of crypto custody

services ([see FSM Report CRYPTO15](#)), asking what actions each agency is taking to increase its fluency in crypto; Mr. Quarles cited the Fed's CBDC inquiry, Ms. McWilliams noted the FDIC's RFI, Mr. Hsu noted an interagency team dedicated to crypto, and Mr. Harper announced the NCUA's forthcoming crypto RFI. Rep. Budd (R-NC) asked about the timeline for approving the remaining crypto trust charters and the status of Figure's application; Mr. Hsu had no timeline, but noted that Figure's application ([see Client Report CHARTER28](#)) is under review. Rep. Lynch (D-MA) worried that special purpose charters may convey the benefits of banking without commensurate responsibility; Mr. Hsu noted the need to safely adapt to innovation.

- Archegos: Rep. Perlmutter asked how to promote stronger risk management by institutions such as Archegos; Mr. Hsu noted that Archegos revealed a lapse in risk management, citing the need to identify weaknesses early. Rep. Torres (D-NY) asked if agencies will require greater disclosures for derivatives in light of Archegos; Mr. Quarles noted that, as the bulk of the losses took place outside the United States, he believes that the regulatory and supervisory framework worked well, although the Fed is also reviewing it. Rep. Torres also asked if Archegos should prompt a re-examination of family offices; Mr. Quarles believes that is premature, highlighting what he believes are more relevant risk management issues.
- Climate Change: Reps. Wagner (R-MO), Barr (R-KY) and Loudermilk (R-GA) worried about the Fed's increased focus on climate change; Mr. Quarles denied that there is any. Rep. Wagner also asked if the FDIC has the proper tools to assess climate risk; Ms. McWilliams believes the FDIC does. Rep. Posey (R-FL) asked if regulators should require financial institutions to increase their capital to protect against climate risk; Ms. McWilliams believes that is premature.
- LIBOR Transition: Reps. Huizenga (R-MI) and Hill (R-AR) worried about SOFR; Mr. Quarles praised SOFR as robust and comprehensive, noting however that the Fed will not dictate a single alternative. Rep. Gonzalez asked if congressional action is necessary to facilitate greater certainty regarding legacy contracts; Mr. Quarles agreed. Rep. Gonzalez also asked if it might be beneficial to have one standard benchmark for contracts without fallback language; Mr. Quarles noted that, although a single standard might be logistically helpful, he believes that there are other ways to provide clarity.
- ILCs: Rep. Sherman (D-CA) worried that ILCs may be used to blur the line between commerce and banking, urging the FDIC to impose a moratorium on new ILC charters while Congress investigates the matter. Rep. Luetkemeyer also raised concern about the co-mingling of banking and commerce due to ILCs, asking if the FDIC's final rule codifying the ILC process ([see FSM Report ILC15](#))

will prevent this; Ms. McWilliams believes it will, noting that the parent company serves as a source of strength.

- True-Lender Rule: Reps. Posey, Huizenga, Williams (R-TX) and Loudermilk asked about the status of the true-lender rule; Mr. Hsu noted that the OCC paused its review of the rule when the Senate voted to repeal it and is monitoring House deliberations. He had planned to review it anyway, but the manner of that review now depends on the extent of Congressional action. Rep. Meeks (D-NY) noted that although he did not like the rule as implemented it did attempt to address a legitimate problem, asking if the OCC could bring forward a new rule were the current one to be repealed; Mr. Hsu would not commit to any next steps.
- “Fair Access” Rule: Rep. Maloney (D-NY) urged the OCC to rescind its “Fair Access” rule while Rep. Barr criticized the OCC’s decision not to enforce the rule; Mr. Hsu does not intend to revisit the rule.
- CRA: Reps. Maloney, Velázquez (D-NY), Cleaver (D-MO) and Lawson (D-FL) urged an inter-agency update; Mr. Hsu agreed that a joint rulemaking could be a viable option but emphasized the need for further review.
- AI: Rep. Loudermilk praised the inter-agency AI RFI ([see FSM Report AI](#)), asking what the agencies hope to accomplish; Ms. McWilliams explained that the RFI will enhance agency knowledge.
- Payment-System Access: Rep. Budd asked why the Fed would deny payment-system access to non-depository OCC-chartered banks; Mr. Quarles recognized an increasing variety of institutions interested in account access, noting proposed guidance ([see FSM Report PAYMENT22](#)) to govern account access.
- CCyB: Rep. Hollingsworth (R-IN) opposed the Democrats’ draft bill that would require the Fed to activate the CCyB for the largest banks when the FOMC increases interest rates; Mr. Quarles agreed that, although changes in interest rates may sometimes be correlated with weakening credit standards, that correlation is imperfect.
- Rent-a-Bank: Rep. Adams (D-NC) worried about fintech-bank partnerships re-introducing predatory lending practices; Ms. McWilliams believes that there is a lot of misunderstanding about fintech partnerships, noting that fintechs are able to provide loans to consumers with lower credit scores.
- Forbearance: Reps. Luetkemeyer and Scott (D-GA) worried about loans emerging from forbearance; Mr. Quarles affirmed that banks should continue to work with borrowers even as forbearance ends and Ms. McWilliams noted the FDIC’s work to ensure banks are appropriately modifying loans.

- Margin Eligibility Requirements: Rep. Hollingsworth asked if the Fed is working to update the margin eligibility requirements for OTC derivatives; Mr. Quarles confirmed it is.
- Credit Unions: Chairwoman Waters confined much of her questioning to credit unions, focusing on the garnishment of funds by credit unions as well as the potential for credit unions to set up branches in banking deserts.