



FedFin Client Report

Tuesday, August 3, 2021

Senate Banking Probes Overdrafts, Mergers, Climate Risk, New Charters, Much More

Client Report: REFORM207

Executive Summary

Today's Senate Banking hearing on bank supervision did not include FRB Vice Chairman Quarles, who came before the panel for withering criticism earlier this year ([see Client Report REFORM206](#)). Acting Comptroller Hsu, FDIC Chair McWilliams, and NCUA Chairman Harper received a considerably warmer welcome from Democrats, although Ranking Member Toomey (R-PA) blasted the OCC for what he called politicization of bank supervision and urged all the agencies to leave the CRA rulebook as is. Chairman Brown (D-OH) attacked bank regulation prior to the arrival of the Biden team, by inference continuing his criticism of Chairman Powell's regulatory approach ([see Client Report FEDERALRESERVE63](#)). Under questioning, Mr. Hsu announced that his agency is reviewing overdraft fees; while he did not say in which context, it would appear to be with an eye on the extent to which earnings reliance on them may be unsound, but reputational-risk considerations may also be renewed. As before, Mr. Hsu said the OCC is reviewing the state of nontraditional charters recently approved by the agency even though Sen. Toomey asserted that not permitting those receiving preliminary approval to move forward undermines the agency's reputation. Despite requests, the agency heads provided no timetable for the CRA rewrite they formally announced late [last month](#). Sen. Warren (D-MA) plans to launch a new attack on large-bank M&A, reintroducing [legislation](#) and likely holding hearings sure to garner attention but unlikely to result in statutory change.

Analysis

Opening Statements

Chairman Brown criticized big banks for buying smaller banks and closing branches, leaving consumers vulnerable to payday lenders and fintechs. He supported the new interagency CRA effort, pushing also for no-fee accounts and a tougher FDIC

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approach on bank mergers. He also emphasized the need to close fintech "loopholes," crack down on shadow banks, and implement stronger capital requirements.

Ranking Member Toomey again criticized the "politicization" of bank regulation, citing President Biden's Climate E.O. ([see FSM Report GREEN8](#)), criticizing both Acting Comptroller Hsu and Chairman Harper for their climate focus. He also opposes the President's E.O. on competition ([see Client Report MERGER6](#)), which he argued will make it more difficult for small and medium-sized banks to merge, decreasing competition.

Testimony

OCC Acting Comptroller Hsu highlighted the need to guard against bank complacency, warning of high-risk banking activities. He also emphasized the need to reduce inequality in banking, adapt to digitalization, and address climate risk. Describing climate change as a safety and soundness issue, he has asked staff to review current climate risk management practices in order to identify best practices. He has also asked staff to review special-purpose charters, citing their disintermediation risks.

FDIC Chairwoman McWilliams delivered a detailed description of the condition of the banking system, highlighting an array of FDIC proposals and initiatives. Emphasizing the FDIC's focus on economic inclusion and innovation, she noted only that the FDIC is monitoring climate risk.

NCUA Chairman Harper urged Congress to enact legislation to provide the NCUA with examination and enforcement authority over third-party vendors, improve the National Credit Union Share Insurance fund, and make permanent the enhancements to its central liquidity fund.

Q&A

- **Bank Mergers:** Sen. Warren announced that she will be reintroducing the "Bank Merger Review Modernization Act." The bill would require regulators to determine that the public benefits of any bank merger outweigh the costs, set financial stability and stress-testing standards, require CFPB approval for some mergers, and specify community reinvestment ratings for merger approval.
- **Interest Rate Caps:** Chairman Brown and Sen. Reed (D-RI) reiterated the need for legislation (S. 2508) to extend the military interest-rate cap on certain financial products to all consumers ([see Client Report PREEMPT37](#)). Defending the bill's

credit-union exemption, Chairman Brown asked if a thirty-six percent APR cap would impact loan products offered by credit unions; Mr. Harper said that it would not, noting existing interest-rate caps. Sen. Reed asked if charging a “reasonable” rate for consumer credit is indicative of effective lending practices; Mr. Hsu believes that it is.

- **Fintech:** Chairman Brown criticized the FDIC for expanding the reach of fintech firms into the banking sector, pressing for a crackdown on nonbanks that are misleading consumers. Sen. Toomey asked what the FDIC learned from its digital assets RFI ([see FSM Report CRYPTO18](#)); Ms. McWilliams noted many comments on the benefits of an intra-bank payment network.
- **Charters:** Sen. Toomey criticized Acting Comptroller Hsu for his review of crypto charters, arguing that the OCC’s reputation could be damaged if a previously-approved charter is subject to having its charter revoked; Mr. Hsu explained that the purpose of the review is to ensure a holistic approach and that there is no “race to the bottom” in the shadow banking system.
- **Capital Requirements:** Chairman Brown criticized FRB Vice Chairman Quarles for weakening capital standards, asking if Mr. Hsu will work to reverse this. Mr. Hsu supports strong capital requirements.
- **CRA:** Chairman Brown asked about the timing of an interagency CRA rule; Mr. Hsu said only that agencies are working quickly, noting great urgency. Sen. Toomey believes a CRA re-write is a mistake. Sen. Menendez (D-NJ) hopes that a revamped rule addresses minority small-business owners’ lack of access to credit. Sen. Tester (D-MT) asked if the agencies are committed to considering the unique needs of rural America and Indian country; Ms. McWilliams and Mr. Hsu are. Sen. Smith (D-MN) noted the need to address the minority business ownership gap through CRA, also asking what a revamped CRA could do to address a lack of lending on tribal land: Ms. McWilliams noted that the CRA could assign different formulas for investments in Native American and minority businesses.
- **Climate Risk:** Sen. Toomey worried about new capital rules for climate risk; Mr. Hsu emphasized the OCC’s current focus on risk management. Sen. Cortez Masto (D-NV) asked about the OCC’s approach to climate change and its vision for its new [climate change officer](#); Mr. Hsu said the climate officer will accelerate effective climate change risk management practices. Sen. Cortez Masto also asked about the FDIC’s work to address climate change; Ms. McWilliams noted that the agency has regional risk councils looking at regional climate issues.

- **Small-Dollar Loans:** Sen. Reed asked if the OCC considers it abusive or deceptive to make loans that the borrower cannot repay; Mr. Hsu believes it is. Sen. Scott (R-SC) asked for an update on the interagency small-dollar lending principles ([see FSM Report PAYDAY9](#)); Mr. Hsu highlighted alternative data as a potential way to bring credit invisibles into the financial system.
- **Overdraft:** Sen. Van Hollen (D-MD) cited three financial institutions that make one hundred percent of their profits on overdraft fees, asking if they are safe and sound; as noted, Mr. Hsu announced that the OCC is looking closely at overdrafts.
- **Diversity:** Sen. Menendez criticized the lack of Latino senior leadership at the OCC, FDIC, and NCUA, noting also very low submission rates for diversity self-assessments from supervised institutions; Mr. Hsu expressed support for mandatory reporting.
- **AML/CFT:** Sen. Warner (D-VA) asked about the AML Act of 2020's implementation ([see FSM Report AML133](#)); Mr. Hsu noted collaboration with FinCEN in ensuring that deadlines are met.