



# FedFin Weekly Alert

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Monday, September 20, 2021

## ❑ A POWERFUL PUSH TOWARDS A NEW SECURITIES REGULATORY REGIME

Last week was an eventful one for U.S. securities regulation both through what was said and even more interestingly left unsaid:

**What Was Said:** At his first hearing after confirmation ([see Client Report INVESTOR18](#)), SEC Chairman Gensler reiterated his far-reaching agenda, one then met by the increasingly-usual partisan acrimony. As our client report makes clear, Mr. Gensler stood his ground on hot-button topics such as cryptoasset regulation, payment for order flow, retail-investor protection, climate-risk and human-capital disclosures, incentive compensation, and MMF reform. As we detailed, Democrats want still more still faster; Republicans countered that investors can take care of themselves, urging the Commission to promote innovation, not demand an array of new standards. No matter, Mr. Gensler has broad authority and will advance what he wants when he wants it through the regulatory and enforcement process unless or until Congress demands something different.

**What Was Unsaid:** FedFin [Client Report PUSH-OUT14](#) goes into detail on a critical issue buried in Mr. Gensler's [testimony](#) on which no senator of either party touched at the September 14 hearing. The chairman's assertive view of Commission authority clearly extends not just to the topics noted above and much else, but also the question of which securities and securities-like activities fall within his ambit. Our new report describes how Congress sought to settle this question in 1999 and then again in 2006, leading to an uneasy compromise between the Fed and SEC which Mr. Gensler appears ready to rewrite with far-reaching consequences across the spectrum of bank capital-markets activities.

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## Headlines From the Past Week's Daily Briefings

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### [September 13](#)

- **Gensler Presages Renewed Push-Out Battle Over Bank Securities Regulation -** In his [testimony](#) ahead of his first Senate Banking appearance as SEC chairman, Gary Gensler added several new market-structure integrity and transparency issues

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to the Commission's already-formidable to-do list, announcing a review of the non-Treasury fixed-income market.

### September 14

- **Warren Renews Demand for Wells Fargo Break-Up** - Renewing her attack against Wells Fargo, Sen. Warren (D-MA) has called on the Fed to retract the company's financial holding company (FHC) status.
- **Treasury/FHFA Reset the GSEs' Role in U.S. Housing Finance** - As we forecast earlier this year, Treasury and the FHFA suspended — but did not abrogate — key aspects of the Trump Administration's final changes to the standards governing Fannie Mae and Freddie Mac under the PSPA.

### September 15

- **FHFA Changes Capital Course on Key Requirements** – FHFA said it would soon issue revisions to GSE capital regulation. It now has, proposing to retract the prior rule's dim view of credit-risk transfer (CRT) with a new approach actively promoting it.
- **Acting Comptroller Expands on Equality Banking, Other Priorities** In remarks, Acting Comptroller Hsu reiterated his priorities: reducing inequality, addressing digitalization, countering climate risk, and guarding against complacency.

### September 16

- **Warren Adds Her Voice to Those Demanding Fed Ethics Rewrite** - Press reports indicate that FRB Chairman Powell has ordered a System-wide review of permissible investments and activities.

### September 17

- **Waters Demands Thompson FHFA Appointment** - In an unusual move, HFSC Chairwoman Waters (D-CA) endorsed Sandra Thompson as permanent FHFA head.
- **Path Paved for Interagency CRA Rule** - The *Federal Register* includes the OCC's proposal to replace its controversial Community Reinvestment Act (CRA) rule (see Client Report CRA28) with the 1995 interagency CRA standard until pending inter-agency work on a new regime is complete.

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## This Week

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### Tuesday, September 21

HFSC Task Force on Financial Technology hearing entitled: "Preserving the Right of Consumers to Access Personal Financial Data." [10:00am, Remote] Witnesses not yet available.

**Thursday, September 23**

HFSC Subcommittee on National Security, International Development and Monetary Policy hearing entitled: Lending in a Crisis: Reviewing the Federal Reserve's Emergency Lending Powers During the Pandemic and Examining Proposals to Address Future Economic Crises." [10:00am, Remote] Witnesses not yet available.

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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](#).

- **[PUSH-OUT14](#)**: As [we noted](#), SEC Chairman Gensler's written Senate Banking [testimony](#) included a short – but very significant – statement prioritizing Commission review of key fixed-income market sectors.
- **[GSE-091621](#)**: As [we noted](#), FHFA wasted no time after the [PSPA revision](#) with its proposed changes to GSE [capital regulation](#).
- **[GSE-091521](#)**: As noted, Treasury and the FHFA pulled the Trump PSPA's plug, although importantly and widely overlooked is that this is true only when it comes to near-term asset-purchase considerations.
- **[INVESTOR18](#)**: As is often the case, Senate Banking's hearing with SEC Chairman Gensler did not touch on the fixed-income structure questions highlighted in his written testimony even though these could be among the most consequential for long-term capital-market regulation and the balance between the Fed and SEC in this key arena.
- **[GSE-091021](#)**: Soaring house prices have of course aroused lofty housing-bubble worries.
- **[GSE-090821](#)**: As Karen Petrou's [Monday memo](#) forecast, FHFA is doubling down on an already-ambitious work plan to make Fannie and Freddie the epitome of mortgage-finance equity.
- **[SBA40](#)**: Turning again to a provision in the 2010 Dodd-Frank Act, the Bureau of Consumer Financial Protection has issued a sweeping proposal to implement small-business and small-farm lending disclosure requirements akin to those long required under the Home Mortgage Disclosure Act (HMDA).
- **[GSE-090121](#)**: A [major paper](#) delivered at last week's Jackson Hole Fed meeting shows – we think conclusively – that it's not demographics that keep interest rates so, so low, but wealth inequality.
- **[OVERDRAFT10](#)**: Senior Senate Democrats have proposed legislation that would sharply restrict most transaction-account overdraft fees to the point of likely eliminating them for most consumers at most depository institutions.