



# *FedFin Client Report*

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Wednesday, September 29, 2021

## **HFSC Explores Wide Array of Merger, Fintech, ILC Reforms**

Client Report: **MERGER7**

### **Executive Summary**

In a wide-ranging hearing today, HFSC's Consumer Protection and Financial Institutions Subcommittee showed the extent to which Chairwoman Waters (D-CA) and progressive Democrats are wary of large-bank mergers. Buoyed by witnesses who believe recent large transactions accelerate under-service for communities of color, Democrats suggested new, tougher standards and greater transparency. Republicans countered that regulatory burden exacerbates consolidation. However, both sides of the aisle agreed that fintechs pose an array of risks, with Democrats contending these warrant new ILC standards or even an end to limited-purpose charters. Republicans lambasted the true lender rule reversal, arguing it harms the bank-fintech partnership model they generally supported. For fintechs operating outside of bank partnerships, there was bipartisan agreement that the regulatory playing field needs to be leveled to reduce arbitrage opportunities. As detailed below, the session built a legislative record on bills addressing ILCs, cash acceptance, de novo chartering, and merger reviews, laying the groundwork for future HFSC action if Chairwoman Waters expands her agenda.

### **Analysis**

#### ***Opening Statements***

Chairman Perlmutter (D-CO) praised several recent innovations, but he noted significant consumer-protection concerns, especially with regard to AI/ML, and algorithmic underwriting. He also described current banking markets as competitive although key provisions in bank charters are now being "stretched."

Ranking Member Luetkemeyer (R-MO) says that the current regulatory landscape adversely affects community banks and competition. Banks and nonbank

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partnerships permit innovation and increase access while maintaining the benefits of regulatory supervision.

### **Testimony**

Paulina Gonzalez-Brito, Executive Director at the California Reinvestment Coalition, pressed for expanding CRA, arguing that mergers such as U.S. Bank/MUFG should require an express community-benefit requirement and not result in branch closures. She also opposes many fintech/AI applications, arguing they hurt minority communities.

Makada Henry-Nickie, Robert and Virginia Hartley Fellow for Governance Studies at Brookings, argued that M&A adversely affects communities of color and the underbanked, also calling for expanding CRA and giving the CFPB authority over CRA.

Sarah Jane Hughes, University Scholar and Fellow in Commercial Law at Indiana University School of Law, said consolidation poses challenges for small communities. She supports additional state-regulated institutions – banks and fintech – on grounds that state supervisors better understand consumer protection needs.

Desiree Jackson, Assistant Vice President for Treasury Management at Beneficial State Bank, argued for unionizing bank employees.

Jim Reuter, Chief Executive Officer of FirstBank and testifying on behalf of American Bankers Association, said consolidation and fintech are long-term trends that challenge community banks due to the growing need for scale. He also raised credit unions and their ability to purchase banks. Fintech entry into bank-offered services without like-kind regulation also poses competitive challenges.

### **Q&A**

- **Fintech:** Members on both sides of the aisle complained about fintech regulatory exemptions, with Rep. Luetkemeyer calling for more bank/fintech partnerships and renewal of the true-lender rule. Rep. Foster (D-IL) countered that fintechs can reach the under-served and often lower banking costs, but is also wary of regulatory arbitrage opportunities. Rep. Casten (D-IL) renewed Democratic calls ([see FSM Report ILC13](#)) for BHC regulation of ILC parents.

- **AI/ML:** Chairman Perlmutter renewed his concern about consumer protection and Rep. David Scott (D-GA) said it adversely affects African Americans.
- **M&A:** As noted, Chairwoman Waters argued for routine public hearings, arguing that mergers are driving poor service in areas such as mortgage servicing. She also wants mandatory community advisory committees, possibly requiring these under the pending CRA regulatory rewrite. Rep. Posey (R-FL) suggested current capital requirements encourage mergers; Ms. Huges believes they do. Rep. Meeks (D-NY) argued that consolidation creates banking deserts and hurts people of color, asking about ways to encourage de novo charters. Rep. Barr (R-KY) pressed H.R. 2561, his legislation to mandate less onerous requirements for smaller banks. Rep. García (D-IL) said regulators rubber-stamp M&A, citing several recent examples of promises he said went unmet.
- **PPP:** Rep. Luetkemeyer attributed PPP problems largely to fintech, while Chairwoman Waters said that big banks unduly favored large clients with whom they already had relationships, and PPP funding thus “ran out” for others. Large banks were also criticized by Reps. Velázquez (D-NY) and Presley (D-MA) for favoring white borrowers.
- **Small Business lending:** Rep. Velázquez also announced that she will shortly introduce legislation applying TILA-like requirements to small-business loans.
- **CRA:** Rep. Al Green (D-TX) decried that fintechs are not subject to CRA, arguing their lack of regulation contributes to banking deserts.
- **Cash:** Rep. Kustoff supports the Payment Choice Act ([see FSM Report ACCESS3](#)), as does Rep. Rose (R-TN).