



FedFin Weekly Alert

Monday, October 4, 2021

❑ BACK TO WORK

Although Senate Banking ([see Client Report REFORM208](#)) and HFSC's ([see Client Report REFORM209](#)) hearings this week with Secretary Yellen and Chair Powell ostensibly focused on the CARES Act, in reality they covered the waterfront. In between them, HFSC's Consumer Protection Subcommittee considered risks from fintech and much more ([see Client Report MERGER7](#)). This session made clear that a bipartisan consensus is forming around the need to bring fintech inside the regulatory perimeter when not partnering with a bank. At the least, this consensus powers up the banking agencies' efforts to use their third-party vendor powers to impose consumer-protection and safety- and soundness rules on fintechs linked to banks ([see FSM Report VENDOR9](#)). More importantly, they signal initial Congressional alignments that may well lead to substantive legislation in 2022 and, even if they don't, will surely lead to a new regulatory framework. Key discussion points at all of these hearings focused on:

- **Fintech:** The growing consensus that fintech is powered by regulatory arbitrage doesn't mean Congress knows yet what to do about it. Rep. Luetkemeyer (R-MO) pushed bank/fintech partnerships while arguing also for renewal of the true-lender rule ([see FSM Report PREEMPT35](#)). That the OCC surely will not revive, but [what comes next](#) will be a restructured definition of true lender with even more fintech clout than the third-party vendor standards.
- **Mergers:** Following Senate Banking's hearing, Sen. Warren [introduced legislation](#) to tighten merger standards, toughening pre-merger discussions and requiring CFPB approval for mergers involving consumer finance. Pre-merger CRA criteria would also be ramped up, as our forthcoming in-depth analysis will discuss. Chairwoman Waters (D-CA) also wants to require greater public input for approvals, arguing for mandatory public hearings and community advisory committees. While Democrats including Chairman Brown (D-OH) and Rep. García (D-IL) also said that the Fed is "rubber-stamping" mergers, Republicans countered that mergers are being driven by the need to achieve sufficient economic scale due to regulatory costs, arguing for more tailoring.
- **ILCs:** Democrats continue to urge full BHC regulation of ILC parents, with draft legislation ([see FSM Report ILC13](#)) on tap to close the "ILC" loophole. Republicans avoided discussion of ILCs at last week's hearing, but at a hearing earlier this year on ILCs ([see Client Report ILC16](#)) Rep. Luetkemeyer questioned

the wisdom of allowing additional commercial entities – especially large ones – to enter financial services.

- **CBDC:** Republicans remain wary that any U.S. CBDC might preclude private cryptocurrencies or stablecoins, demanding assurances that these will not be prohibited were CBDC introduced. Chair Powell made clear he has no intentions to issue any prohibitions, noting also his preference for CBDC to expressly be authorized by law.
- **Crypto/stablecoins:** While Chair Powell does not want these banned, he does want them regulated. And so they soon will be as most Members of Congress seem to think makes sense. In praising Ms. Omarova's nomination to be Comptroller of the Currency, Sen. Brown specifically referenced her strong views on this topic. Even Sen. Lummis (R-WY), perhaps the Senate's strongest crypto advocate, now [favors bank charters for stablecoin ventures](#) and is open to new crypto regulation ([see Client Report INVESTOR18](#)). The PWG is also expected late this month to issue its much anticipated [stablecoin report](#), pressing for just the kind of bank charters proposed by HFSC Task Force Chairman Lynch (D-MA).

Headlines From the Past Week's Daily Briefings

September 27

- **FRB-NY Climate Stress Test Reveals Large Capital Shortfalls** - A new Federal Reserve Bank of New York paper proposes a climate stress-test methodology which, when deployed, finds significant systemic risk due to large bank capital shortfalls during periods of sharp transition risk.
- **Timeline Set for GSE Capital Rewrite** - The *Federal Register* includes FHFA's proposed changes to the GSEs capital framework.
- **Gensler Ramps Predictive-Analytics Threat Up to Systemic Risk** - Following his Senate Banking appearance, SEC Chairman Gensler reiterated his focus on digital engagement practices (DEPs), warning that predictive data analytics could increase systemic risk due to increased data- source concentration, herding, and interconnectedness.
- **McHenry Attacks Treasury for "Social Agenda," Warns of Chinese Threat** - Ahead of Treasury Secretary Yellen's appearance before HFSC, Ranking Member McHenry (R-PA) blasted Biden administration financial policy on grounds that it advantages China at cost to U.S. national interest.

September 28

- **BIS Advances Cross-Border CBDC Settlement** - The BIS updated its Innovation Hub's CBDC work, detailing Phase 2 findings and laying out the scope of Phase 3 to accelerate cross-border payments via CBDC.

September 29

- **HFSC Yellen, Powell Hearing Sure to be More than Lively** - Although the HFSC Democratic staff memo suggests hearing with Chair Powell and Secretary Yellen will focus on pandemic-relief programs, we expect it instead to devolve to the kind of heated debate evident at Senate Banking session.
- **Global Supervisors Renew Demand for Bigtech Standards** - The BIS's Financial Supervisory Institute (FSI) issued its latest bigtech assessment. Largely a survey of global actions, it concludes that competition (i.e., antitrust) policy is the focus of recent efforts in most surveyed nations.
- **Basel Capital, Liquidity Compliance Gaps Grew in 2020** - In its latest monitoring report, the Basel Committee finds a significant jump to 2.9 percent from 1.8 percent in the amount of capital the largest banks need to comply with the final Basel III/IV framework.

September 30

- **FSB Expands Surveillance Across Financial Sectors, Time Horizons** - The Financial Stability Board significantly revised the way it assesses systemic risk, announcing a new "surveillance framework."
- **BIS Builds Out New Retail-CBDC Construct** - Following its work on CBDC's benefits for cross-border settlement, the BIS joined seven major central banks issuing three reports pressing ahead with key retail-finance features.

October 1

- **Warren Anti-Merger Bill Won't Pass, Still Packs Punch** - Following her assertions ([see Client Report REFORM208](#)) that the Fed "rubber-stamps" bank mergers, Sen. Warren (D-MA) introduced S. 2882, legislation sharply tightening the conditions on which bank mergers may be approved.
- **IMF Calls for Fast Crypto Rules to Stem Rising Threats** - The IMF's latest blog post summarizes a new IMF report highlighting crypto's emerging consumer and systemic risks.
- **FIO: U.S. Insurance Industry Strong, But Challenged by Low Rates** – Treasury's Federal Insurance Office (FIO) released its annual report on the insurance industry as required by Dodd-Frank.

This Week

Tuesday, October 5

Senate Banking Executive Session [9:45am, 538 Dirksen SOB]. Votes on the following nominations: **Mr. Brian Eddie Nelson**, of California, to be Under Secretary for Terrorism and Financial Crimes, Department of the Treasury; **Ms. Elizabeth Rosenberg**, of Vermont, to be Assistant Secretary for Terrorist Financing, Department

of the Treasury; **Ms. Julia Ruth Gordon**, of Maryland, to be an Assistant Secretary of Housing and Urban Development; **Mr. David Uejio**, of California, to be an Assistant Secretary of Housing and Urban Development; and **Mr. Solomon Jeffrey Greene**, of the District of Columbia, to be an Assistant Secretary of Housing and Urban Development.

Senate Banking hearing entitled: "Afghanistan's Future: Assessing the National Security, Humanitarian and Economic Implications of the Taliban Takeover." [10:00am, 538 Dirksen SOB] Witnesses: **Mr. Adam M. Smith**, Partner, Gibson Dunn and Crutcher, former Treasury Department senior advisor, and former Director, Multilateral Affairs, National Security Council; **The Honorable Sue Eckert**, Senior Associate, Center for Strategic and International Studies, and lecturer, Jackson Institute for Global Affairs, Yale University; **Dr. Orzala Nemat**, Director, Afghanistan Research and Evaluation Unit; and **Mr. Thomas Joscelyn**, Senior Fellow, Foundation for Defense of Democracies.

HFSC hearing entitled: "Oversight of the U.S. Securities and Exchange Commission: Wall Street's Cop is Finally Back on the Beat." [12:00pm, WebEx] Witness: The Honorable **Gary Gensler**, Chair, Securities and Exchange Commission.

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](#).

- **[GSE-093021a](#)**: Now that we have FHFA's comment deadline – November 26 – we expand our [initial analysis](#) of FHFA's capital rewrite into a more detailed assessment of its strategic impact.
- **[REFORM209](#)**: In very sharp contrast to the Senate Banking session on Tuesday with Chairman Powell and Secretary Yellen ([see Client Report REFORM208](#)), today's HFSC session was largely devoted to partisan wrangling over monetary policy, the debt ceiling, and the Biden Administration's overall fiscal policy.
- **[GSE-093021](#)**: Late yesterday, Senate Banking Ranking Member Toomey sent letters [to Secretary Yellen](#) and FHFA [Acting Director Thompson](#) strongly protesting the [PSPA rewrite](#) and [pending capital proposal](#).
- **[MERGER7](#)**: 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.
- **[REFORM208](#)**: Although today's Senate Banking hearing with Chairman Powell and Secretary Yellen was largely taken up by the debt ceiling, Sen. Warren (D-MA) made it very clear that progressives will mount an aggressive campaign against Mr. Powell, calling him a "dangerous" man.

- [**GSE-092421**](#): According to a group of Senate Democrats, the answer to this question for a new class of federally-backed mortgages is "out of debt."
- [**GSE-092221**](#): Getting a bit ahead of FHFA's new [equitable-finance mandate and its express demand for appraisal equity](#), Freddie Mac has released a detailed [study](#) of one of the most significant barriers to housing-finance equity: discriminatory appraisal practices that reduce the chances for wealth accumulation.
- [**DATA2**](#): Today's HFSC Fintech Task Force Hearing featured an appearance by Full Committee Chairwoman Waters (D-CA) arguing against consumer opt-out.
- [**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 [yesterday](#), 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 today 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.
- [**SMBUS27**](#): 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).