



Friday, December 17, 2021

## Partisan Battle to Have Lasting FDIC Impact

HFSC Chairwoman Waters (D-CA) late [yesterday](#) reiterated her opposition to FDIC Chair McWilliams' decision to quash the merger RFI circulated by FDIC Board Democrats ([see FSM Report MERGER9](#)), highlighting her recent [letter](#) to bank regulators calling for a moratorium on all bank mergers over \$100 billion and saying again that these threaten community banks, small businesses, and consumers. She demands an answer from the FDIC chair on the process followed at the [board meeting](#), but sets no deadline for a response.

In sharp contrast, Senate Banking Republicans [today](#) urged President Biden to rebuke Directors Chopra and Gruenberg, demanding also that he promptly nominate a replacement for Mr. Gruenberg, whose term has expired. They also urge the President to nominate a candidate for the vacant vice chairman position which they say is now reserved for a Republican.

## FSOC: Systemic Risk Elevated, Much Work in Progress

FSOC today met to consider its annual stability [report](#), which strikingly differs with the Fed's more sanguine view of systemic risk ([see Client Report SYSTEMIC92](#)). The Council concludes that banks and CCPs are resilient, but systemic risk is "elevated." Potential shocks include uncertain global growth, elevated asset prices, crypto and other digital assets, cybersecurity, and the LIBOR transition. We will shortly provide clients with an in-depth assessment of the report, which was unanimously approved at today's meeting and provides a guide to U.S. regulation and even possible systemic designations in 2022.

The meeting also included unanimous agreement to a new FSOC climate-risk task force. Although FDIC Chair McWilliams abstained from prior FSOC climate-risk actions, she did not do so today perhaps in part because her views on this area have recently garnered so much [political attention](#). Chair Yellen said the committee is an important step forward on an urgent priority, and Acting Comptroller Hsu noted the OCC [yesterday](#) requested feedback on proposed risk-management principles for large national banks; FRB Chair Powell said he looks forward to reviewing the OCC's proposal. Council members also strongly underscored the importance of LIBOR transition, with Chair Powell reiterating the need to enact legislation to ensure a smooth transition for legacy contracts. SEC Chair Gensler discussed the Commission's new [MMF proposal](#), speaking as did [Secretary Yellen](#) also to the need to govern open-end funds. As [noted](#), the BIS last week highlighted an array of systemic risks in that sector.

## DOJ Redefines M&A Outlook

Even as partisan warfare continues over the Democratic merger RFI ([see FSM Report MERGER9](#)), the Department of Justice has irrevocably altered the M&A outlook by [reopening](#) its 2020 request for comment ([see Client Report MERGER5](#)). Making clear that the Biden Administration has a different approach than its Trump predecessors, the DOJ release not only cites President Biden's injunction to protect community banks ([see Client Report MERGER6](#)), but also praises Director Chopra's initiative at the FDIC. Following DOJ's release, FTC Chair Khan applauded it, reinforcing Administration concern about banking-industry consolidation.

Although aspects of the 2021 request for comment echo the 2020 inquiry into matters such as the appropriate HHI threshold, DOJ now also seeks views on the entire bank-merger construct in areas such as the extent to which it adheres to applicable law and the need for new remedies when mergers are problematic. We will shortly provide clients with an in-depth analysis of DOJ's request; comments on it are due by February 15.

## GAO: Alternative Data's Potential Stymied by Risks, Uncertainties

The GAO late yesterday issued a [report](#) on the potential for alternative data to expand mortgage access for borrowers with minimal credit histories, concluding that current uncertainties and risks limit fair and effective use. The report does not provide solutions, instead noting several initiatives such as Enterprise validation and approval of new credit score models, new definitions of qualified mortgages, or the use of an affordable secondary mortgage market model that might improve alternative data use. Risks cited include consumer data privacy issues, increased repurchase risk, a race to the bottom in accepted credit score models, and AI/ML derived underwriting models that lack sufficient explainability. Were these problems resolved, alternate data then could increase access for minority and low-income borrowers, improve default-risk predictability, and perhaps even lower interest rates. GAO also worries that limited performance information on alternative data based loans may affect the willingness of investors to purchase them and that alternative data could correlate with groups protected by fair lending laws, leading to discrimination.

### 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](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](#).

- [\*\*GSE-121721\*\*](#): As [noted](#) on Thursday, FHFA continues to tread carefully through the big-bank rulebook, adopting standards said to be like-kind that aren't quite so similar when it comes to critical details.
- [\*\*MERGER9\*\*](#): Released in a highly-controversial fashion (see below) by two Democrats on the FDIC's board, this RFI posits the need for a significant review of mergers involving insured depository institutions (IDIs) due to many changes in the financial industry and, so it says, the lack of substantive competitive analysis over past decades even of the largest transactions.
- [\*\*GSE-121521\*\*](#): Although there were signs [earlier this year](#) that the QRM risk-retention exemption might get a long-delayed overhaul, the agencies [yesterday](#) ducked any decisions.
- [\*\*GSE-120921\*\*](#): On Tuesday, [HUD](#) and the [CFPB](#) opened the door to [special-purpose mortgage finance](#). Now, we expect FHFA to use this safe harbor to mandate express GSE equitable-finance programs and for banks to take much of what's left in all their commitments after George Floyd's murder and turn it into mortgage and other community-finance products.
- [\*\*CRYPTO23\*\*](#): As [anticipated](#), today's HFSC hearing was a marathon session at which industry witnesses defended their business model, Republicans liked it fine, and Democrats worried about a wide array of policy challenges.
- [\*\*COVEREDFUND3\*\*](#): The OCC is "clarifying," but also in many respects rescinding one aspect of controversial 2020 rules expanding the "covered funds" under which banks may make equity investments as provided by the Volcker Rule.
- [\*\*GSE-120621\*\*](#): As we noted on [Friday](#), Senate Banking Ranking Member Toomey asked SEC Chairman Gary Gensler a trick question about GSE [obligations](#) at the very end of a lengthy letter focused principally on cryptography.

- **GSE-120221:** Two recent studies add fuel to the fire we first spotted [late last year](#): demands for ARMs that only go down.
- **FEDERALRESERVE65:** Continuing the partisan and often-acrimonious tone of the Senate Banking hearing ([see Client Report FEDERALRESERVE64](#)), HFSC today heard from Chairman Powell and Secretary Yellen.
- **CRYPTO22:** Although the OCC joined other agencies issuing a non-committal "roadmap" for future cryptography actions, the agency at the same time and far more decisively stated that crypto activities are permissible only if they are also safe and sound.
- **FEDERALRESERVE64:** Most of the news at today's Senate Banking hearing revolves around Chairman Powell's concession that inflation may not be transitory and economic growth is now so robust that quantitative tightening might proceed more quickly than planned, pandemic permitting.
- **GSE-113021:** Unsurprisingly, [FHFA today raised](#) the GSEs' conforming loan limit to about \$647,000 and the high-cost limit to nearly \$1 million.
- **GSE-112421:** Because FHFA tends to take its cue from both the Basel Committee on Banking Supervision and its U.S. cousins, we here drill down to look at the housing-finance implications of the proposed global framework we assessed in a [recent in-depth report](#).
- **CLIMATE12:** Following the UN's COP26 climate-risk summit, the Basel Committee has proposed high-level principles guiding risk management and supervision related to both physical and transition climate risk.