



FedFin Weekly Alert

Monday, March 28, 2022

❑ A UDAAP SLAP

Later this week, HFSC will hold a hearing on overdrafts designed to get any laggards still charging them to heed [Director Chopra's threats](#) and abandon these fees no matter what this does to their bottom line. This case is yet another proof of the power of regulatory threat even in the absence of express regulatory action that the agency's director and some bank regulators are not loathe to use. However, the CFPB is taking no chances with still broader initiatives to redesign retail finance in line with the agency's new paradigm in which retail finance aims at the public good, not private profit. As we detailed in our assessment last week of the CFPB's new examination manual ([see FSM Report CONSUMER39](#)), the agency has reformulated its approach to unfair, deceptive, or abusive acts or practices (UDAAPs) to make it a powerful weapon against pretty much anything it doesn't like. Implications in the context of recent actions include:

- The Bureau will not just issue guidance about what it deems problematic practices, but also censure them as [UDAAP](#). By doing so, it can throw the book not only at the financial institution engaged in any such practice, but also any others found to "assist" it.
- The Bureau also may not feel it needs to do much more than issue the manifesto on "junk fees" it released last month ([see FSM Report CONSUMER38](#)). It [said](#) that it's gotten an earful from consumers on what they don't like, extending the comment deadline until mid-April to ensure it has heard still more. Thereafter, it might take the path of regular order and issue standards or guidance providing more precise descriptions and definitions of which fees it plans to censure. But, on the other hand, it can just call them UDAAP and censure away.
- Companies that think themselves on the periphery of consumer finance -- e.g., mortgage or title insurers -- may be brought under the Bureau's gun if the agency thinks any of the products or services provided to regulated consumer-finance firms constitute UDAAP.
- Any or all of this could be subject to legal challenge, but likely only after the Bureau indicts someone for something it thinks a UDAAP and the legal and reputational damage to the instigator is done.

Headlines From the Past Week's Daily Briefings

March 21

- **FSB Cites Growing FinTech/BigTech Concerns, Policy Solutions Await** - The FSB published its latest assessment of fintech, now adding bigtech to the picture and elaborating on the array of policy concerns it and BIS have previously sketched out.
- **SEC Sets Out Sweeping U.S. Climate-Risk Disclosure Construct** - On unsurprising party lines (3-1), the SEC released proposed climate-risk disclosures for public registrants.

March 22

- **BIS Advances Cross-Border CBDC Settlement** - The BIS announced significant progress accelerating the ability of CBDCs to handle cross-border payments.
- **ECB Head Criticizes Crypto, Calls for CBDC** - Although we have not been able to confirm this by official remarks, press reports indicate that ECB head Christine Lagarde has concluded that crypto-assets and -currency are significant factors in Russian-sanctions evasion.
- **CFPB Attaches UDAAP Label to Product-Review Practices** - Building on FTC action, the CFPB issued guidance stipulating that contractual-gag orders and certain other practices (e.g., employee or paid reviews) affecting the integrity of consumer reviews are illegal in credit-card, mortgage, or other consumer-finance marketing.
- **Treasury Lays out Digital-Asset Work Plan** - In remarks, Treasury Under-Secretary Liang laid out her agency's plans to execute President Biden's digital-asset order ([see Client Report CRYPTO26](#)).

March 23

- **Agencies Update Procedural Standards** - The Federal Reserve and other banking agencies released proposed changes to their administrative procedures allowing greater use of electronic communications and implementing numerous other modernizations.
- **Fed Study Slams MMF Structural Risk** - The Federal Reserve has released a new staff paper confirming global and U.S. conclusions regarding continuing MMF risk.

March 24

- **Waller Adds Residential Real Estate to Monetary Policy Criteria** - In remarks, FRB Gov. Waller addressed the impact of what he calls the "red-hot" housing market on monetary and fiscal policy.
- **HFSC Expands Diversity Data Demands to Large Insurers** - Chairwoman Waters and Diversity Subcommittee Chairwoman Beatty expanded the committee's diversity efforts to include insurers via a letter sent to the largest insurance companies.
- **IOSCO Decries DeFi, US Regulatory Intervention Likely** - Going beyond the general DeFi concerns outlined in a February FSB report, IOSCO released a detailed

report arguing that most DeFi products are directly akin to regulated investment, lending, and clearing products, posing not only the risks otherwise captured within the prudential perimeter, but also numerous additional risks presented by the manner in which DeFi generally operates.

- **HFSC Wants Names re Russian Business Exposure, Sanctions Compliance** - HFSC Chairwoman Waters sent a letter to financial and business trade associations requesting detailed information on each sector's efforts to divest from Russia.

March 25

- **Fed Puts Off Finalizing New DIHC Framework** - The FRB extended the comment deadline on a [longstanding proposal](#) crafting a new regulatory framework for depository institution holding companies principally engaged in insurance services.
- **CFPB Wants to Hear More re Pricing Practices** - Saying it has been swamped with consumer tales about "junk fees," the CFPB [extended](#) the comment deadline until April 11 on its request for views on this hot topic.
- **Bipartisan Crypto Construct Harder to Build than Describe** - On a *Politico* [webcast](#), Sens. Kirsten Gillibrand (D-NY) and Cynthia Lummis (R-WY) announced a bipartisan alliance to craft cryptoasset standards they expect to see on the Senate floor by year-end.
- **Waller Still Wants Little to Do with a CBDC** - At a feisty [panel](#), FRB Gov. Chris Waller stood by his [view](#) that a CBDC is "a solution in search of a problem."
- **Senate Democrats Demand Overdraft-Fee Fix** - Sen. Rev. Warnock (D-GA) and Chairman Brown (D-OH) [joined](#) other Democrats demanding lower or eliminated overdraft fees.
- **FDIC Starts Process of Revising Bank-Merger Policy** - The FDIC has officially released the [bank-merger RFI](#) that now-Acting Chairman Gruenberg and CFPB Director Chopra sought to release under Chair Jelena McWilliams.

This Week

Tuesday, March 29

HFSC Hearing entitled: "Devalued, Denied, and Disrespected: How Home Appraisal Bias and Discrimination Are Hurting Homeowners and Communities of Color." [10:00am, 2128 RHOB] Witnesses not yet available.

Senate Banking Hearing entitled: "Economic Impact of the Growing Burden of Medical Debt." [10:00am, Dirksen Senate Office Building 538] Witnesses: Ms. Berneta L. Haynes, Staff Attorney, National Consumer Law Center; Professor David A. Hyman, Scott K. Ginsburg Professor Of Health Law & Policy, Georgetown University Law Center; Dr. Benedic N. Ippolito, Senior Fellow, American Enterprise Institute; Ms. Emily Stewart, Executive Director, Community Catalyst.

Wednesday, March 30

HFSC Task Force on Artificial Intelligence Hearing entitled: “Keeping Up with the Codes – Using AI for Effective RegTech.” [10:00am, 2128 RHOB] Witnesses not yet available.

SEC Open Meeting [11:30am, webcast]. Matters to be discussed: The Commission will consider whether to propose amendments regarding special purpose acquisition companies, shell companies, the use of projections in Commission filings and a rule addressing the status of special purpose acquisition companies under the Investment Company Act of 1940.

HFSC Subcommittee on Investor Protection, Entrepreneurship and Capital Markets Hearing entitled: “Oversight of America's Stock Exchanges: Examining Their Role in Our Economy.” [2:00pm, 2128 RHOB] Witnesses not yet available.

Thursday, March 31

HFSC Subcommittee on Consumer Protection and Financial Institutions Hearing entitled: “The End of Overdraft Fees? Examining the Movement to Eliminate the Fees Costing Consumers Billions.” [10:00am, 2128 RHOB] Witnesses not yet available.

Senate Agriculture Hearing entitled: “State of the CFTC.” [10:00am webcast]. Witnesses not yet available.

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-032222](#)**: As detailed in our new in-depth [analysis](#), the CFPB's [exam-manual rewrite](#) dramatically redefines the compliance-, legal-, and reputational-risk terrain for any consumer-financial company and the vendors or counterparties on which it relies.
- **[CONSUMER39](#)**: Reflecting one of its new director's top priorities as well as that of the Biden Administration, the Bureau of Consumer Financial Protection has significantly revised its examination manual when it comes to behavior that might be viewed as discriminatory in a wide range of consumer-financial products, services, underwriting, advertising, marketing, governance, and other arenas.
- **[SANCTION17](#)**: The Senate Banking Committee's hearing today on illicit finance focused as expected on cryptocurrency and suggests that targeted legislation addressing specific jurisdiction or compliance issues might advance on a bipartisan basis.
- **[GSE-031522](#)**: Although we have done extensive analysis of a U.S. central-bank digital currency (CBDC) in our sister analytical service, we have not viewed as it as an imminent strategic consideration for housing-finance agencies and financial institutions.

- **[CRYPTO26](#)**: We follow our initial client alert here with an in-depth analysis of President Biden's long-awaited [executive order](#) laying down steps intended quickly to construct a U.S. digital-asset policy construct.
- **[GSE-030722](#)**: A new Urban Institute study suggests that banks are more likely to discriminate when it comes to minority borrowers, heightening concerns at a time with increased political risk related to racial equity and mortgage finance.
- **[GSE-030122](#)**: As we noted late [last week](#), FHFA has finalized revisions to its [2020 capital rule](#) that most importantly lighten the GSEs' capital load and reinvigorate credit risk transfer.
- **[GSE-022822](#)**: Responding to continuing FSOC complaints about [nonbank servicers](#), FHFA has proposed [new seller-servicer eligibility standards](#) that crack down hard on any nonbank servicer whose size evokes systemic qualms.
- **[SANCTION16](#)**: In this report, we address many of the questions we've received about U.S. policy in the wake of Russia's invasion into Ukraine.
- **[GSE-022422](#)**: As noted late [yesterday](#), the CFPB has gotten a jump on FHFA and the banking agencies with the first step towards a long-delayed AVM rule demanded in the [Dodd-Frank Act](#).
- **[CRYPTO25](#)**: Despite fierce partisan fighting over pending Fed nominations, today's Senate Banking hearing on stablecoin regulation was considerably more bipartisan than last week's HFSC session ([see Client Report CRYPTO24](#)).
- **[GSE-021022](#)**: Moving far ahead of the banking agencies [AI](#), FHFA [today](#) released a series of supervisory AI/ML standards for Fannie, Freddie, and CSS, perhaps leaving the FHLBs alone because none so far does much within this arena or nobody cared.
- **[GSE-020922](#)**: Continuing her very different vision of Fannie and Freddie, FHFA Acting Director Thompson [today](#) has released a new strategic plan for the agency emphasizing the importance of both equitable and sustainable housing finance.
- **[CRYPTO24](#)**: Today's HFSC hearing on stablecoins makes it clear that the bipartisan legislation Chairwoman Waters (D-CA) prefers is at best a long way off.
- **[FEDERALRESERVE69](#)**: As this report details, all three Fed nominees before the Senate Banking Committee today emphasized the vital importance of Fed independence and their anti-inflation zeal to quell GOP opposition and cement it among moderate Democrats.