



FedFin Daily Briefing

Thursday, May 26, 2022

CFPB Demands Adverse-Action Notices No Matter AI Opacity

Targeting AI's fair-lending implications, the CFPB today issued its third [circular](#) laying out new policy without public notice or comment. As with the previous circular ([see FSM Report DEPOSITINSURANCE113](#)), the new one expressly establishes CFPB enforcement policy and, by inference, thereby sets new standards. The Bureau now lays out lender fair-lending obligations for any "black-box" models used for credit underwriting and a requirement for adverse-action notices stipulating the reason for credit denial. The Bureau also states that its enforcement policy will hold firms accountable for these adverse-action notices regardless of the extent to which the AI system's decisions may be opaque to the lender, effectively requiring lenders to ensure model transparency regardless of vendor proprietary-information or model-validation concerns. We will shortly provide clients with an analysis of the new circular, which echoes the banking agency's proposal to ensure that banks are responsible for third-party underwriting ([see FSM Report VENDOR9](#)), but goes farther in several respects. The scope of CFPB enforcement penalties is likely also to be graver than those the banking agencies would demand given its new UDAAP examination manual ([see FSM Report CONSUMER39](#)).

Numeric Scores Join Credit Scores on Hot Seat

The GAO today released a [report](#) calling on Congress to give consumers protections for numerical scores affecting business decisions similar to those mandated for credit scores. Although the thrust of GAO's study is targeted marketing that leads to discounts or other advantageous product offerings, the scores banks used to evaluate depositor risk might well fall under this new framework, as more clearly would any cross-selling decisions. Risks of concern to GAO include bias, unduly high costs, restricted product offerings, and opacity that puts consumers at greater risk in light of difficulties correcting any problematic conclusions. The Research Subcommittee of the House Science and Technology Committee requested this report, making clear it is not an immediate priority of either House Energy & Commerce or Financial Services, both of whom would likely need to act in order to advance legislation in this arena. However, in light of recent CFPB actions on credit scores and AI (see today's separate FedFin report), the Bureau may simply act to restrict these scores whenever they apply to consumer-finance offerings.

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](#).

- [CBDC13](#): Newly in place as Fed Vice Chair, Lael Brainard today made it clear at an HFSC full committee hearing that her prior statements laying out CBDC benefits are still her thinking despite the considerably more ambivalent approach outlined in the Fed's discussion draft ([see FSM Report CBDC10](#)).
- [DEPOSITINSURANCE113](#): Using a new approach to issuing enforcement edicts – a circular – the CFPB has made use of its controversial decision to bring nonbanks under its ambit to bolster the FDIC's efforts to enhance consumer understanding of which funds are entrusted to FDIC-insured depositories and

which may be at greater risk in other hands.

- **CRYPTO27**: Sharp disruptions in cryptoasset markets, and especially those for stablecoins, have energized calls for rapid U.S. statutory and regulatory action along lines initially laid out by the President's Working Group on Financial Markets (PWG).
- **CRA32**: Following much talk about the need to update Community Reinvestment Act (CRA) rules since this was last done in 1995, federal banking agencies have finally agreed on a proposed redesign of standards essential to banks that wish to expand or acquire as well as those seeking strong community ties and the policy and political benefit these afford.
- **GSE-051622**: As we [noted](#) last week, the federal banking agencies sighed a mighty sigh and heaved up a massive inter-agency [proposal](#) rewriting decades-old standards detailing which activities earn the Community Reinvestment Act (CRA) points essential for any bank's strategic objectives and national reputation.
- **FSOC27**: With stablecoin markets even more distressed than earlier in the week, today's HFSC hearing with Secretary Yellen was even more emphatic than senators two days before on the need for action ([see Client Report FSOC26](#)).
- **FSOC26**: Today's Senate Banking Committee hearing with Secretary Yellen renewed calls for federal legislation based on recent algo-coin losses and resulting digital-currency market volatility.
- **SYSTEMIC93**: In this report, we assess the new Federal Reserve financial-stability [report](#).
- **CRA31**: The FDIC today led the way with release of a long-awaited inter-agency [proposal](#) updating decades-old CRA regulation.
- **CLIMATE13**: The FSB's report is aimed at establishing global standards that prevent fragmentation along national or regional lines as well as ensuring that regulatory and supervisory actions mitigate climate risk to the greatest extent possible in the face of an array of data and measurement challenges.
- **INTERCHANGE9**: As anticipated, bankers and card networks squared off with merchants at today's Senate Judiciary hearing addressing credit-card interchange fees.
- **GSE-042822**: In this note, we expand on our analysis of the CFPB's new campaign against [nonbank financial institutions](#) to look more deeply at its impact on residential-mortgage finance.
- **CONSUMER42**: Today's HFSC hearing with CFPB Director Chopra plowed much ground broken yesterday before the Senate Banking Committee ([see Client Report CONSUMER40](#)), but several new furrows were also unearthed.
- **CONSUMER41**: Using what it describes as "dormant" authority, the CFPB is seeking comment on a rule setting the procedures under which it expands its authority to nonbank financial companies it believes pose consumer-protection risk.