



# FedFin Weekly Alert

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Monday, June 6, 2022

## ❑ ROCK AND ROLL AT THE CFPB

Over the past few weeks, the CFPB has released a series of advisories, interpretive rulings, circulars, and examination policies instituting ground-breaking changes in U.S. consumer-finance policy without the muss and fuss of public notice and comment or the other niceties of the Administrative Procedure Act. This process strengthens the agency's hand to act decisively and attain immunity from the more lengthy rulemaking process that could expose it to Congressional sanction should Republicans take control of both Houses in the next Congress. The White House will of course remain under Mr. Biden, but Congressional Review Act proceedings lay the groundwork for judicial challenge even if the rule in question isn't revoked. The CFPB's rapid-fire approach to policymaking without rulemaking is also subject to challenge in the courts, but most likely only after one or another company has been charged under one or another of the Bureau's edicts. Unless or until that happens, most companies will do their best to comply with each of these edicts and the Bureau will have gotten a good deal of what its director, Rohit Chopra, says he wants in each of the forceful press releases accompanying these actions.

We provided you an in-depth analysis ([see FSM Report FAIRLEND11](#)) of the Bureau's most recent high impact ruling which tells all lenders in no uncertain terms that they are must provide adverse-action notices when credit is denied even if the AI underwriting or other systems on which denial is based are so opaque the lender isn't quite sure what happened. Under another recent [action](#), these adverse-action notices also apply when a change adverse to the borrower (e.g., credit-line reduction) is made to an outstanding loan.

Further, it issued yet another edict ([see FSM Report CONSUMER41](#)), which stipulates that the CFPB's standards are now applicable to any nonbank consumer-finance company even if the Bureau lacks statutory supervisory authority.

Other important recent CFPB actions outside the formal rulemaking process include:

- **UDAAP:** The Bureau has revised its examination manual to allow it to deem any violation of consumer-protection or fair-lending law by any consumer-finance entity to be UDAAP, thus exposing it and third parties to significant legal and reputational risk ([see FSM Report CONSUMER39](#)).

- **FDIC Insurance Status Representations:** The Bureau is taking action against fintechs and other non-bank entities that, intentionally or not, create the impression of protection akin to that enjoyed at traditional banking organizations ([see FSM Report DEPOSITINSURANCE113](#)).
- **State Consumer-Protection Enforcement:** The Bureau [issued](#) an interpretive rule essentially encouraging states to enforce federal consumer-protection standards. The rule gives states broad latitude to proceed with or without the Bureau on any of the federal consumer-protection standards within the CFPB's jurisdiction, even if the Bureau already has an outstanding enforcement action against the state's target.

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## Headlines From the Past Week's Daily Briefings

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### [May 31](#)

- **Basel Finalizes Climate Standards, Advances Those for Crypto** - The Basel Committee [announced](#) progress on two key policy concerns: climate risk and cryptoassets. Although it did not release its final action, the Committee has finalized proposed high-level principles for climate-risk management and scenario analysis ([see FSM Report CLIMATE12](#)).
- **Brown Portrays Wells Fargo as Repeat Offender** - Senate Banking Chairman Brown (D-OH) sent a blistering [letter](#) to Wells Fargo CEO Charles Scharf accusing the bank of failing to combat racial and gender discrimination in light of allegations that Wells Fargo conducted fake job interviews for minority and female candidates.

### [June 1](#)

- **IMF Charts USD Decline** - The IMF [published a blog](#) in its Chart-of-the-Week series portraying the declining status of the US dollar as the global reserve currency.
- **IMF Presses Central Banks to Go Green** - A senior IMF advisor, Tobias Adrian, [argued](#) that central banks should include sustainability considerations not only in their financial-stability and monetary-policy analyses, but also in their balance sheets.

### [June 2](#)

- **Fed Study Outlines Fixes to Make Retail CBDC Functional** - A new Federal Reserve [paper](#) assesses the interplay between a U.S. retail CBDC and monetary policy transmission if whatever the Fed comes to offer is widely adopted for both payment and investment purposes.
- **Black Crypto Investments Reflect Wealth Gap Born of Financial System Distrust** - A new [article](#) by the Kansas City Fed investigates the popularity of cryptoassets among Black investors and explains what may attract them and how this is a symptom of the racial wealth gap.

- **Fed Study Finds Enforcement Actions Increase Minority Lending** - A [study](#) released by the Fed found that, since 1997, banks subject to an enforcement action increased their mortgage lending to minorities and decreased minority denial likelihood, even if the action was not issued for violation of the fair-lending laws.
- **FIO Prioritizes Biden Climate-Risk Goals** - The [meeting](#) of FIO's Federal Advisory Committee on Insurance focused on FIO's work to meet the goals set out for it in the President's climate-risk executive order ([see FSM Report GREEN8](#)).

### June 3

- **Agency Heads Stress Need for CRA Reform** - Acting Comptroller Hsu, Fed Vice Chair Brainard, and Acting FDIC Chairman Gruenberg took questions on the controversial, far-reaching inter-agency CRA regulatory rewrite ([see FSM Report CRA32](#)).
- **FRB-Cleveland Study: Small-Business Lending Continues Race/Ethnic Disparities** - A new [paper](#) published by the Federal Reserve Bank of Cleveland finds evidence that race-based lending disparities persisted through the pandemic, concluding that Black business owners in particular struggled to receive loans compared to whites, fintechs have not overcome credit disparities, and minority-owned businesses were less likely to receive the PPP amounts for which they applied.
- **Waller Seeks Balance in Crypto Rules** - FRB Gov. Waller [described](#) the advantages of innovative, unregulated markets such as that created by cryptography at its outset.
- **FinCEN Takes Baby Step to No-Action Letters** - Reflecting demands from Congress in recent AML law ([see FSM Report AML133](#)), FinCEN [issued](#) an advance notice of proposed rulemaking outlining how a no-action letter process might work.

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## This Week

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### Wednesday, June 8

Senate Banking Committee Executive Session. [2:30 pm, Dirksen Senate Office Building 538]. Matters to be discussed: To vote on the following nominations: **The Honorable Michael S. Barr**, of Michigan, to be a Member and Vice Chairman for Supervision of the Board of Governors of the Federal Reserve System; **Mr. Jaime E. Lizárraga**, of Virginia, to be a Member of the Securities and Exchange Commission; and **Mr. Mark Toshiro Uyeda**, of California, to be a Member of the Securities and Exchange Commission.

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## Recent Files Available for Downloading

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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-060222](#)**: Following on the heels of new [capital disclosures](#), FHFA has [finalized](#) a planning process designed to ensure that GSEs have something good to say when they post these reports, reassuring markets and perhaps even speeding the way out of conservatorship.
- **[GSE-060122](#)**: As detailed in our [new in-depth report](#), the CFPB has issued another sweeping rule by way of a seemingly innocuous circular not subject to public notice and comment.
- **[FAIRLEND11](#)**: Continuing its use of novel rulings that preclude public notice and comment, the CFPB has issued a landmark ruling on artificial intelligence (AI) and other forms of algorithmic underwriting stipulating lender responsibility for sending out the adverse action notices required under the Equal Credit Opportunity Act (ECOA).
- **[GSE-052722](#)**: FHFA has [finalized](#) its October [proposal](#) to create a new qualitative capital and governance disclosure regime, going well beyond the disclosures initially mandated in the final capital [rule](#) to instill market discipline long associated with private companies, not conservatorships.
- **[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.