



# *FedFin Daily Briefing*

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Tuesday, June 7, 2022

## **New Crypto Bill Empowers Digital Assets, Faces High Hurdles**

After months of negotiation and public discussions, Sens. Lummis (R-WY) and Gillibrand (D-NY) [today](#) introduced a comprehensive crypto-reform measure designed to promote the proverbial “responsible-innovation” on which all sides agree despite wide differences in how each defines this goal. We will shortly provide clients with an in-depth analysis of the measure, which helps to set the terms of debate for the rest of the year even though its chances of passage are slim to nil. If Democrats retain Congressional control in the next Congress, then numerous provisions will also still face very high hurdles, but the senators readily acknowledge that they know change will be necessary to win enactment. Many contentious issues also remain addressed in only preliminary ways (i.e., via mandatory study), making it clear that a truly comprehensive measure also requires considerable additional work.

Among the most controversial sections to which Senate Banking Democratic leadership will strongly object is the measure’s decision to hand most crypto-market regulatory decisions to the CFTC. This skirts Chairman Gensler’s “wild-west” view of the marketplace to put standard-setting in friendlier hands at the CFTC, but we expect Sens. Brown (D-OH), Warren (D-MA), and others to block it. Adopting another approach to which these senators strongly object, the bill tracks the Toomey bill ([see FSM Report CRYPTO27](#)) by segregating investment from payment stablecoins; payment stablecoins come under rules which, as we noted in our analysis of the Toomey bill, put nonbanks at a considerable advantage to banks and raise questions about reserve-asset liquidity.

The bill also pressures the Fed to grant nonbanks access to the payment system. Banks are likely strongly to oppose much in the bill because of all the advantages nonbanks would gain under it. The bill would also authorize a special-purpose crypto charter akin to the one contemplated by former Acting Comptroller Brooks ([see FSM Report CRYPTO15](#)).

Consumer-protection advocates are likely also to oppose the bill’s approach to this key issue; for example, it requires crypto providers to agree on finality terms with their customers rather than ensuring that finality is not only promised, but also possible. Authority for relatively-unconstrained state/federal “sandboxes” will also draw fire from the CFPB and similar entities.

## **CBDC Adoption Has Compelling Rationale Even Though CBDC Not Essential**

A new [article](#) from the Federal Reserve Bank of Richmond weighs the pros and cons of US CBDC adoption, concluding that – although CBDC would be unlikely to bring short-term benefits to the money and payments system – several compelling reasons nonetheless exist for implementation and, at the least, serious design and functionality research and policy preparedness. The article first identifies and then dismisses certain arguments it deems insufficient to justify rapid CBDC adoption, including international competition, payment efficiency, and financial inclusion. It also highlights significant potential pitfalls such as financial disintermediation and financial instability. Major CBDC benefits are found to include market discipline, consumer protection, anchoring and bridge effects for private cryptocurrencies, fraud reduction, and buttressing the US dollar. Still, though, the article also states that direct regulation of nonbank digital currency issuers

and allowing banks to compete in the digital currency space could serve as important regulatory alternatives to CBDC.

## Brown Wants FSOC to Quell Consumer-Data Sales

Senate Banking Chairman Brown (D-OH) [today](#) renewed his campaign against consumer-data sales, directing his requests to FSOC but doubtless also firing up CFPB action in a newly-high profile arena. The Brown letter builds on President Biden's focus on consumer-data ownership in the competitiveness context ([see Client Report MERGER6](#)), now also suggesting that consumer-data sales pose systemic risk because of numerous "entry points" disclosed in these data which "bad actors" may exploit. The letter does not actually lay out the direct channels of systemic risk, focusing instead on how financial data may be used to promote higher product pricing by the third parties who obtain it from a financial institution. This concern echoes that in a recent GAO [report](#) about numerical scores for business decision-making based on both financial and non-financial consumer data. The FSOC is asked not only to look into consumer-data use, but also to assess the extent to which GLBA privacy protections at banks afford sufficient consumer protection. Whether Sen. Brown believes these should be strengthened at banks, extended to nonbanks, or otherwise altered (e.g., by giving consumers express data-ownership rights) is not made clear nor is a deadline set for Secretary Yellen's response.

## HFSC Dems Demand More on Historic Patterns of Slavery Finance, Insurance

HFSC Chairwoman Waters (D-CA) and all of the panel's subcommittee chairs today sent a letter to the ten largest U.S. [banks](#) and five largest life insurers demanding more data on the financing of slavery. The inquiry follows a recent [hearing](#) and seeks answers about the extent to which each company has researched its own role and remediated its activities. Legislative action to address any practices Democrats feel have not been addressed via appropriate reparations or similar action is unlikely, but public scrutiny may increase pressure on the industry in terms of racial-equity audits and on some of the targeted firms to increase their focus on any predecessor companies engaged in lending or insuring enslaved persons or the transport, sale, or other business associated with them (including via support for cotton, tobacco, and other crops largely harvested by enslaved persons). The committee is also interested in the extent to which any of the institutions it queries financed the abolition movement or the transport of formerly enslaved persons to safe havens.

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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-060722](#): FHFA released its first-ever [report](#) on the extent to which Fannie, Freddie, and the FHLBs meet their statutory mission.

- **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](#).