



FedFin Weekly Alert

Monday, August 22, 2022

❑ A PAYMENT SYSTEM PREMISED ON PECCADILLOS?

As we noted at the [start of this month](#), August may seem quiet, but that's only because Congress is more or less muffled. Regulators remain busy, with the CFPB a-churn with new actions. Our in-depth analyses of the Bureau's new digital-marketing rule ([see FSM Report FINTECH30](#)) and data-safeguards standards ([see FSM Report INFOSEC28](#)) make clear that the CFPB never sleeps. Bank regulators are also wakeful, with the most recent evidence of this to be found in the FDIC's NSF-fee [clamp down](#) and the Fed's supervisory cryptoasset [statement](#) and striking new payment-system access policy ([see FSM Report PAYMENT25](#)). As our in-depth analysis describes, this policy could well redefine winners and losers across the entire spectrum of U.S. financial services.

We "could" because, as we also detail, so much of the Fed's new policy depends on what each Reserve Bank decides to make of it. Although the Fed touted its final statement as a tribute to consistency, transparency, and fairness, it's hard to see much consistency or transparency and fairness will only be known once policy decisions come gradually to light in the marketplace. This was not lost on members of Congress. Sen. Toomey (R-PA) continues his campaign to get more from the Fed on its Reserve Trust decision, now joined by all [Senate Banking Republicans](#) in criticizing the Fed's closed-door access decision-making. The Lummis-Gillibrand cryptoasset bill ([see FSM Report CRYPTO28](#)) is devastating on this point, not only demanding openness, but also proposing a new approach to payment-system access in which the Fed could do little but say "yes." Sen. Lummis (R-WY) said that the new policy is better than the old, but still nowhere near good enough.

Unless or until the Reserve Banks grant nontraditional firms payment-system access and this then comes quickly to light, we expect the Fed's guidelines will stand as is unless or until court challenges to recent decisions force a clearer and perhaps more stringent approach on the Federal Reserve System. If Republicans gain Senate control, then legislation to rewrite payment-system transparency and perhaps even access will follow; if not, likely not.

Headlines From the Past Week's Daily Briefings

[August 15](#)

- **FDIC Study Finds Changing Assessment Rates Had Pro-cyclical Effects During the Financial Crisis** - A new FDIC staff [study](#) tackles an immediate concern in the wake of

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the FDIC's proposal to raise DIF premiums ([see FSM Report DEPOSITINSURANCE114](#)): procyclicality.

- **Fed Tries to Sooth Payment-Access Critics with New Policy** - Doubtless reflecting all the political pressure it's under regarding [payment-system access](#), the FRB not only finalized its payment-system access rules, but also made sure to use an e-mail subject line containing the [release](#) that these rules are "transparent, risk-based, and consistent."

August 16

- **FRB-Cleveland Study: Banks are Better Small-Business Lenders Than Fintechs** - Using data from the 2021 Small Business Credit Survey, a new Federal Reserve Bank of Cleveland [study](#) concludes that small businesses that made use of online lenders were less satisfied with their experiences and more likely to report high rates and unfavorable repayment options than those that used banks.
- **Fed Gives Guarded Guidance re Crypto Activities** - The Federal Reserve Board [released](#) a supervisory letter requiring state member banks to obtain prior approval before commencing cryptoasset-related activities and to ensure that appropriate internal controls are in place in order to do so
- **Toomey Presses for FDIC-Authorized Crypto Activity** - Sen. Toomey (R-PA) sent a [letter](#) to acting Chairman Gruenberg alleging that the FDIC has instructed FDIC regional offices to send letters to multiple banks requesting that they refrain from expanding relationships with crypto firms without any legal basis, citing multiple whistleblower complaints.

August 17

- **Bowman Cautions on Payment-System Access, CBDC** - In [remarks](#), FRB Gov. Bowman pointed to the Fed's final payment-system access [guidelines](#), again urging nonbanks not to have "false expectations" about access while an implementation process advances.
- **CFPB Digital-Market Standards Start Now** - [Federal Register](#) includes the CFPB's interpretive rule subjecting digital companies using behavioral or similar data to market consumer-finance products to federal consumer law ([see FSM Report FINTECH30](#)).

August 18

- **CFPB Plans to Change Credit-Card Filings** - The CFPB is seeking comments on revisions to reports it receives on credit-card terms and those related to certain cobranding agreements.
- **IMF Blog: Climate Finance Should Blend Public/Private Sectors** - An IMF [blog post](#) by its managing director Kristalina Georgieva and Tobias Adrian advocates for blending public and private sector finance as a way of de-risking climate finance.

- **FDIC Takes Concrete Anti-Overdraft Action** - Although the CFPB has [blasted](#) overdraft fees and Acting Comptroller Hsu has suggested that they may pose supervisory [concerns](#), the FDIC took concrete action against them.

August 19

- **Payment-System Decision Process May Begin Today** - *Federal Register* includes the Fed's final payment-system access guidance ([see FSM Report PAYMENT25](#)).
- **CFPB Plans New Credit-Card Fee Disclosure Requirements** - Following its ANPR on credit-card fees ([see FSM Report CREDITCARD35](#)), the CFPB today [published](#) a rationale for its campaign to control them and – despite the early stage of its rulemaking – a plan to do so via a data-collection proposal [published](#) in the *Federal Register*.
- **FDIC Goes After Crypto Companies for False Advertising** - Based on its earlier [warning](#) and recent rule re advertising FDIC [insurance](#), the FDIC [issued](#) cease-and-desist orders against five cryptocurrency companies it claims are advertising that several of their crypto-related products are FDIC-insured.

This Week

No meetings of note.

Future Events of Note

No events of note.

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-081922](#): We look here at an interesting [idea](#) from three senior Fannie Mae officials: an index to measure a Single-Family MBS's social impact.
- [PAYMENT25](#): Following considerable controversy surrounding how Federal Reserve Banks grant master accounts, it has finalized a somewhat more explicit set of guidelines along lines proposed the second time the Fed attempted to set guidelines via a "supplemental" proposal earlier this year amending its 2021 effort.
- [GSE-081722](#): [FHFA](#) and [Ginnie Mae](#) today let loose their long, long delayed standards for eligible seller-servicers.
- [INFOSEC28](#): Using another of its tools to set policy without prior public comment, the CFPB has released a circular stating that inadequate consumer-data safeguards may constitute a breach of

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the unfair, deceptive, or abusive acts or practices (UDAAP) protection standards subject to Bureau enforcement action.

- **[FINTECH30](#)**: Continuing its practice of setting sweeping policy by administrative action without prior notice or comment, the CFPB has issued an interpretive rule sharply curtailing the extent to which digital advertising and market strategies are exempted from the legal and compliance obligations associated with most parties directly providing consumer financial products or services and those acting as servicers to these entities.
- **[GSE-081222](#)**: [FHFA](#), [Fannie](#), and [Freddie](#) yesterday released the results of FHFA's latest stress test, focusing on the severely-adverse scenario in order – or so FHFA says – to push the GSEs to the limit.
- **[INTERCHANGE10](#)**: Two senators have reopened questions about the manner in which card-related payments are handled, tackling those applicable to credit cards with a bill mandating that merchants must be given a network choice that is not either Visa or Mastercard in order to, the sponsors argue, increase competition and lower credit-card transaction costs.
- **[LIBOR8](#)**: Moving belatedly but now expeditiously to implement legislation governing legacy-contract benchmarks when there is no contractual fallback rate, the Fed has proposed a new framework for derivatives, consumer loans, certain GSE contracts, and any other legacy contracts without clear LIBOR-replacement provisions and a “determining person” to effectuate them.