



FedFin Daily Briefing

Wednesday, August 10, 2022

Penalizes Fintech for Taking Consumer Funds Instead of Encouraging Savings

Striking at the heart of the purported financial-inclusion benefits of fintech, the CFPB [today](#) took action against Hello Digit under both its UDAAP powers ([see FSM Report CONSUMER39](#)) and its more recent stand on AI ([see FSM Report FAIRLEND11](#)). Hello Digit touted itself as a product promoting savings for under-served households, but the CFPB found that its algorithms in fact led to overdraft charges as Hello Digit took funds from consumer bank accounts and took bank-account interest that should rightfully have gone to the consumer. The firm is also accused of failing to make customers whole after promising to do so.

Sen Dems Demand More re Rental Housing, Short-Term Loans in CRA Standards

Yesterday's HFSC CRA [comment letter](#) has been followed by [one](#) from Chairman Brown (D-OH) and eighteen Democrats. Although it tracks HFSC Democrats with regard to calls for demographic-scoring requirements and tougher standards for community-development projects, it goes farther with regard to multifamily housing and rental affordability. For example, it recommends that the geographic dispersion of multifamily lending should pair with robust affordability data and appropriate actions within the retail lending and community development tests so that high-cost housing does not displace LMI individuals. It also urges that it be required that rental housing property operators certify that rents will remain affordable by the standard designated for a property for a minimum of ten years or provide annual rent roll documentation demonstrating affordability at that standard to receive CRA credit. Senate Democrats also want regulators to evaluate short-term, small dollar lending products to ensure affordability with banks given positive credit for offering safe alternatives to payday products.

Senate Banking GOP Ramps Up Fed Demands

Following Sen. Toomey's (R-PA) diatribe [last week](#), Senate Banking Republicans have followed through with direct demands for greater Fed transparency and recognition of the central bank's duties to the Congress. In a letter to every member of the Board of Governors released [today](#), they reiterate that the Fed's decision to provide more information to a private group than Sen. Toomey with regard to Reserve Trust's payment-system access suggests the need for statutory change in areas such as FRB and Reserve Bank duties under the Freedom of Information Act. The letter notes recent Fed proposals related to payment-system access ([see FSM Report PAYMENT24](#)), but says that the central bank is first and foremost subject to Congressional scrutiny of policies that appear to smack of favoritism or other structural flaws. As previously [noted](#), underlying concerns about Fed governance are shared by some Democrats and legislation addressing this issue is likely this fall. It will, though, result mostly in still more testy exchanges with Chairman Powell, not statutory change at this late date in this Congress. But, combined with growing concerns about Fed credibility, these governance issues could spark demands for structural change in the next session.

Waters Demands Bureau Halt Equifax Scoring Until Erroneous-Data Problems Revealed, Remediated

HFSC Chairwoman Waters today sent a [letter](#) to the CFPB calling on the Bureau to use all of its powers to ensure remediation for consumers harmed by Equifax's alleged credit-reporting error, as well as institute greater protections for consumers in the "broken" credit-reporting system. She also demanded that the Bureau institute a moratorium on Equifax providing credit scores to financial institutions until it proves to the CFPB's satisfaction that it can accurately verify scores before sending them to lenders. Following [Senate Democrats](#), she also sent a [letter](#) to Equifax demanding answers and remediation. In addition, the Chairwoman [wrote to banks](#) asking a range of questions related to use of and remediation related to erroneous scores. The letters' answers are requested by August 16, suggesting hearings are planned next month.

CFPB Sweeps Up Bigtech in Scope of Consumer-Protection Standards

Building on its inquiry into [bigtech](#) and a controversial interpretive rule expanding its power to nonbanks ([see FSM Report CONSUMER41](#)), the CFPB [today](#) issued an expansive interpretive rule subjecting digital companies using behavioral or similar data to market consumer-finance products to the full thrust of federal consumer law. We will shortly provide clients with an in-depth analysis of this new rule which, as with the Bureau's recent action governing AI ([see FSM Report FAIRLEND11](#)) comes without the notice-and-comment usual in such sweeping policy changes. This tactic may leave the Bureau open to court challenge, but it sets policy in place until any such challenge succeeds. As our in-depth analysis will discuss, the Bureau's action sweeps up Google and other bigtech companies not typically considered "service providers" subject to the CFPB for practices related to advertising and marketing long considered outside the reach of consumer protection standards absent specific deceptive representations. This could materially affect the extent to which bigtech companies enhance their own offerings as well as their power to drive consumers to preferred providers.

Progresses Press Hsu on Crypto Authorizations

Sens. Warren (D-MA), Durbin (D-IL), Whitehouse (D-RI), and Sanders (D-VT) today formally [requested](#) that Acting Comptroller Hsu withdraw the crypto guidance issued by his Trump Administration predecessor in areas such as crypto-custody services ([see FSM Report CRYPTO15](#)) and [node-verification networks](#). Mr. Hsu has so far declined to do so, [instead](#) requiring prior notice from banks demonstrating their ability to undertake these authorized activities and grandfathering banks already engaged in them. The senators argue for a hold on OCC action until broader digital-asset policy is in place as well as for a stay to prevent the climate risk they fear results from crypto mining. Senators also ask Mr. Hsu to answer a series of questions by August 24 on the extent of current national-bank crypto activities, with the tenor of the letter suggesting that the senators believe some national banks have expanded beyond the scope of prior interpretations to engage in new activities and/or significantly scaled up activities in this arena. At this point, we doubt Mr. Hsu will officially withdraw his own interpretation, but additional cautionary statements may be released in concert with renewed efforts by the OCC to reach agreement with the FRB and FDIC on inter-agency policy.

FHFA, GSEs Cracking Down on Servicer Fair-Lending Compliance

To [acclaim](#) from Chairman Brown (D-OH), FHFA [today](#) announced that Fannie and Freddie will henceforth require servicers not just to obtain, but also retain fair-lending data including those on key demographic categories and a borrower's preferred language. Director Thompson notes in the release that these data will assist servicers fulfilling equitable-finance needs, but we would note that they will also make it considerably easier for the CFPB and other regulators to track servicer activity to detect possible fair-lending violations. Fannie and Freddie have yet to release specifics about how servicers are to meet these data requirements or if they will be monitored by the GSEs or FHFA for eligibility or other purposes. However, we would expect FHFA to look carefully at these data in concert with any inquiries from other federal agencies. Collection is required as of March 1.

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](#).

- [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.
- [GSE-072122](#): We yesterday provided a complete assessment of Sandra Thompson's sojourn on HFSC's [griddle](#), noting the lack of any insights into essential issues such as conservatorship's end or the full scope of CRT's new beginning.
- [GSE147](#): At her first hearing as confirmed FHFA Director, Sandra Thompson made it clear to House Financial Services that she is committed to expanding credit-risk transfer (CRT), encouraging equitable finance via new GSE activities, and recapitalizing Fannie and Freddie as quickly as possible.
- [GSE-071922](#): As noted earlier today, the Fed has finally brought forth its LIBOR-transition [proposal](#) specifying permissible benchmarks for legacy contracts without contractual fallback rates.
- [CRYPTO30](#): As part of its response to the President's digital-asset executive order, the Department of the Treasury is seeking views on the broad policy questions on which it believes answers might guide the Administration's next steps.
- [GSE-070822](#): A new Fed staff [note](#) contains startling statistics on how much the housing market has changed in just a few months at grave cost to lower income households.
- [CRYPTO29](#): Global banking regulators are trying a new, but still stringent, approach to governing bank exposures to certain types of crypto assets, revising an initial consultation to focus more on supervisory limitations than on extremely punitive capital requirements for what are deemed to be lower risk

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