



FedFin Daily Briefing

Thursday, August 11, 2022

CFPB Calls Data-Safeguard Shortfalls UDAAP, Urging Enforcement

Using a [circular](#) to set a new standard, the CFPB today announced that failure properly to safeguard consumer data even if no loss or intrusion occurs violates consumer-protection requirements and should be addressed via state enforcement actions along with its own. We will shortly provide clients with an in-depth analysis of the new circular, which sets specific standards in areas such as multi-factor authentication and software updates for data protection the agency believes necessary to govern fintech and other nonbank companies not subject to express data-protection standards such as those applicable to banking organizations. Notably, the data-safeguard standards are said to fall under the Bureau's unfair, deceptive or abusive acts or practices (UDAAP) authority ([see FSM Report CONSUMER39](#)) even though an inadvertent failure to comply with data-protection standards may be negligent, but not also unfair, deceptive or abusive in the ordinary sense these words are understood. The release notes that this circular is part of the agency's broader effort to protect consumer privacy, adding its now-usual invitation to consumers to send examples of bad practice to guide state and federal action.

Warren Joins GOP in at Least One Thing: Demand for Fed Transparency

Although Sen. Warren's (D-MA) complaint [today](#) is different in terms of specifics, it is the same fundamental problem voiced [yesterday](#) by Senate Banking Republicans: the Fed's unwillingness to answer questions or supply information on disputed events. Sen. Warren's letter reiterates her longstanding complaint about Fed insider trading and what she views as the unsatisfactory response from the Board's inspector-general. The letter builds on a prior one from Senate Banking Chairman Brown (D-OH) and [other Democrats](#) complaining about Fed trading practices and new protocols. The GOP complaint is over payment-system access granted Reserve Trust, but both sides agree not only on the problem, but also on the need to mandate by law greater Fed responsiveness and Reserve Bank coverage under the Freedom of Information Act. If Sen. Warren presses legislation to this effect in the fall, it could be enacted this year.

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](#).

- **[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.

- **[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.