



# FedFin Weekly Alert

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Monday, September 12, 2022

## ❑ THE CRYPTO KID

As we noted [last week](#), SEC Chairman Gensler has made it even clearer that he's giving no crypto ground to the CFTC or indeed to anyone who doesn't agree that the Commission has the statutory authority to govern anything crypto token or intermediary that the Commission believes engages in securities offering, settlement, or transactions. This follows the "same-risk, same-rules" framework most recently affirmed for bank digital standards in Michael Barr's [maiden speech](#), but Mr. Gensler takes it to a different level. Unlike his banking-agency colleagues, he doesn't have to reach inter-agency consensus to get what he wants unless or until Congress or the courts tell him otherwise. To be sure, some members of Congress will try just this later in the week. The Senate Agriculture Committee's hearing will stand by the CFTC and Senate Banking Republicans will excoriate Mr. Gensler on Thursday for his strong stand on crypto along with much else. As always, we'll be watching, analyzing, and reporting, but let us know if you've any questions in the interim.

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## Headlines From the Past Week's Daily Briefings

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### September 5

- No news of note.

### [September 6](#)

- **BIS Staff: Banks Have Power Over Bigtech, But We're Not So Sure** - A new [paper](#) from BIS staff argues that bigtech firms have so much power over small-and-medium sized enterprises (SMEs) using their networks that they must "self-limit" this to continue to grow, leading them to share data with banks that fund loans via cheap deposits.
- **CFPB's Sweeping Data-Protection Standards Now Effective** - The *Federal Register* includes the [CFPB's circular](#) on insufficient data protections and security; the circular is now effective.
- **OCC Prioritizes Community Banks** - The OCC released its five-year strategic [plan](#).

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## September 7

- **Hsu Expands on Crypto, Climate, Merger, Systemic Actions** - Acting Comptroller Hsu [made](#) it clear that – contrary to assertions from Sen. Warren (D-MA) and [others](#) – his decision not to rescind prior OCC crypto charters and related rulings does not mean the agency is taking anything other than a cautious approach to cryptoassets.
- **New Brainard Position Suggests Fed CBDC Thinking Advances** - In addition to hawkish anti-inflation [remarks](#), Fed Vice Chair Brainard appeared to back away from her prior comments espousing an expansive view of how a U.S. CBDC might work ([see Client Report CBDC13](#)).
- **Barr Takes Stage With Bold Plans For Capital, Resolution, Mergers** - In his maiden [speech](#), Fed supervisory Vice Chair Michael Barr made several significant announcements.

## September 8

- **Gensler Stands Crypto Ground** - In [remarks](#), SEC Chairman Gensler stood firm: almost all crypto tokens are securities because they are investment contracts under the “Howey Test.”
- **GOP Demands Answers On CBDC Authorization, Construct** - Ranking Member McHenry (R-NC) and all of the HFSC’s Republicans [sent](#) a letter to Vice Chair Brainard demanding that she clarify several issues germane to U.S. CBDC issuance.
- **Toomey Demands Greater CRA Transparency, Updated Regulations** - Ranking Member Toomey (R-PA) sent a [letter](#) to Vice Chair Brainard, Acting Comptroller Hsu, and Director Gruenberg sharply criticizing what he calls a lack of transparency of CRA-derived community benefit plans (CBPs).

## September 9

- **White House Reaffirms Anti-Algo Stand** - The White House [announced](#) core bigtech policy principles.
- **U.S. Announces Start of Work on Basel “End Game”** - Ahead of what might otherwise have been a fractious Basel Committee meeting, the Fed, OCC, and FDIC [reaffirmed](#) the U.S. commitment to finalize what FRB Vice Chair Barr called the [Basel III “end-game.”](#)
- **Basel Chair Announces Preliminary AI Priorities** - Pablo Hernández de Cos, Chair of the Basel Committee, [announced](#) the work that regulators plan on AI and algorithmic decision-making.
- **OFR Details Climate Data-Sharing Efforts** - Acting OFR Director James Martin [addressed](#) the need for integrated climate-related financial data and challenges to forecasting and modeling climate risk.
- **Liang Stresses Climate-Resiliency** - Treasury Under Secretary Liang [reiterated](#) an array of agency and Administration climate-risk priorities, emphasizing ongoing Treasury

and FSOC climate resiliency efforts and underscoring Treasury's commitment to a net-zero economy.

- **Treasury To Issue Price-Cap Sanction Guidance** - Deputy Treasury Secretary Wally Adeyemo [made it clear](#) that enforcement of the anti-Russia oil-price caps will depend not only on restricting shipping insurance, but also doing so for financial and payment services.

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## This Week

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### Tuesday, September 13

Senate Banking Hearing entitled: "New Consumer Financial Products and the Impacts to Workers." [10:00 am, Dirksen Senate Office Building 538]. Witnesses: **Ms. Rachel Gittleman**, Financial Services Outreach Manager, Consumer Federation of America; **Ms. Penny Lee**, CEO, Financial Technology Association; **Professor Todd J. Zywicki**, George Mason University Foundation Professor of Law at George Mason University Antonin Scalia School of Law; and **Mr. David H. Seligman**, Executive Director, Towards Justice.

### Wednesday, September 14

HFSC Hearing entitled: "When Banks Leave: The Impacts of De-Risking on the Caribbean and Strategies for Ensuring Financial Access." [10:00 am, 2128 Rayburn House Office Building]. Witnesses: TBD.

SEC Open Meeting. [10:00 am, webcast]. Matters to be discussed: whether to propose amendments to the standards applicable to covered agencies of the U.S. Treasury securities regarding their membership requirements and risk management and whether to propose amendments to the broker-dealer customer protection rule regarding margin held at covered clearing agencies of U.S. Treasury securities.

Senate Agriculture Legislative Hearing to Review S.4760, the Digital Commodities Protection Act. [10:00 am, G50 Dirksen Senate Office Building]. Witness: **The Honorable Rostin Behnam**, Chairman, Commodity Futures Trading Commission; **Mr. Todd Phillips**, Director, Financial Regulation and Corporate Governance, Center for American Progress; **Ms. Shelia Warren**, Chief Executive Officer, Crypto Council for Innovation; **Ms. Christine Parker**, Vice President, Deputy General Counsel, Coinbase; **Dr. Heath Tarbert**, Chief Legal Officer, Citadel Securities; and **Ms. Denelle Dixon**, Chief Executive Officer, Stellar Development Foundation.

### Thursday, September 15

Senate Banking Hearing entitled: "Oversight of the U.S. Securities and Exchange Commission." [10:00 am, Dirksen Senate Office Building 538]. Witness: **The Honorable Gary Gensler**, Chair, U.S. Securities and Exchange Commission.

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## Future Events of Note

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### Tuesday, September 20

HFSC Subcommittee on National Security, International Development, and Monetary Policy Hearing entitled: "Under the Radar: Alternative Payment Systems and the National Security Impacts of Their Growth." [10:00 am, 2128 Rayburn House Office Building]. Witnesses: TBD.

HFSC Subcommittee on Diversity and Inclusion Hearing entitled: "A Review of Diversity and Inclusion at America's Largest Insurance Companies." [2:00 pm, 2128 Rayburn House Office Building]. Witnesses: TBD.

### Wednesday, September 21

HFSC Hearing entitled: "Holding Megabanks Accountable: Oversight of America's Largest Consumer Facing Banks." [10:00 am, 2128 Rayburn House Office Building]. Witnesses: TBD.

### Thursday, September 22

HFSC Subcommittee on Housing, Community Development, and Insurance Hearing entitled: "State of Emergency: Examining the Impact of Growing Wildfire Risk on the Insurance Market." [9:00 am, 2128 Rayburn House Office Building]. Witnesses: TBD.

### Thursday, September 29

FHFA Listening Session entitled: "FHLBank System at 100: Focusing on the Future." [12:30 pm, FHFA Constitution Center Auditorium]. Matters to be discussed: FHLBanks' general mission and purpose in a changing marketplace; FHLBank organization, operational efficiency, and effectiveness; FHLBanks' role in promoting affordable, sustainable, equitable, and resilient housing and community investment; addressing the unique needs of rural and financially vulnerable communities; member products, services, and collateral requirements; and membership eligibility and requirements.

Treasury's Federal Advisory Committee on Insurance Open Meeting. [1:00 pm, webcast]. Matters to be discussed: climate-related financial risk and the insurance sector; cyber insurance developments; international insurance issues; and FACI will receive status updates from each its subcommittees and from FIO.

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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

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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](#).

- **[INSURANCE61](#)**: Chairman Brown (D-OH) convened a hearing today focused on the insurance industry largely focusing on the extent to which private-equity takeovers endanger insurance solvency and threaten pensioners following risk transfers.
- **[GSE-090722](#)**: Reinforcing the sharp turn-around in housing markets evident since the Fed surprised markets with its first 75 bps hike, a new working paper from the [San Francisco Fed](#) provides the first hard evidence of how monetary-policy shocks in the U.S. hit listing prices hard and fast.
- **[GSE-090122](#)**: As seems always the case, FHFA Director Thompson is as good as her word to Congress earlier this [summer](#), announcing [yesterday](#) a review of the extent to which the Home Loan Banks and their System meet the mission assigned to them and, regardless, if that mission still makes sense.
- **[GSE-083022](#)**: BofA's new no-down payment [mortgage](#) is another innovative product in which banks use their balance sheets to address their CRA obligations by offering down payment assistance or, as here, flat out nothing down.
- **[CRYPTO31](#)**: Reflecting the concerns voiced in a recent executive order from President Biden and a subsequent request for views from Treasury, the Federal Reserve has joined the OCC in demanding prior notice from banking organizations that wish to undertake cryptoasset activities.
- **[GSE-082222](#)**: A new Federal Reserve Bank of Cleveland [study](#) validates forbearance as a mortgage-market buffer, reinforcing the likelihood that policymakers and servicers will turn quickly to it if current mortgage-market conditions turn ugly under the combined stress of higher rates and slow to no growth.
- **[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 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.