



FedFin Daily Briefing

Thursday, September 8, 2022

Gensler Stands Crypto Ground

In remarks [today](#), SEC Chairman Gensler stood firm: almost all crypto tokens are securities because they are investment contracts under the “Howey Test.” Further guidance is unnecessary, he said, because the Commission has been clear and crypto companies request it only because they do not like this conclusion, not because they fail to understand it. Given that many crypto tokens are securities, Mr. Gensler and the Commission also conclude that most crypto intermediaries are transacting in securities and must therefore register, be governed as brokers, or otherwise come under the Commission if lending is designed to provide investment return. Mr. Gensler also emphasized that he will work with Congress to give the CFTC clearer authority over non-securities crypto tokens. He did not go on to say but clearly intends that any additional legislation that restricts the Commission’s authority as he understands it will be opposed.

GOP Demands Answers On CBDC Authorization, Construct

Ranking Member McHenry (R-NC) and all of the HFSC’s Republicans [today](#) sent a letter to Vice Chair Brainard demanding that she clarify several issues germane to U.S. CBDC issuance. These most notably include the extent to which the “support” from the Administration and Congress she said was needed ([see Client Report CBDC13](#)) means express statutory change and Administration order. Interestingly, Republicans also want to know if the Fed is looking at an intermediated CBDC model and, if so, if this requires new law. Answers are due by September 30.

Toomey Demands Greater CRA Transparency, Updated Regulations

Ranking Member Toomey (R-PA) today 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). Describing these as an “egregious” circumvention of congressional intent, he demands that the banking regulators update regulations implementing GLBA’s CRA sunshine provision, specifically urging them to establish a public database containing all CRA-related agreements in full. He also requests a broadened definition of “covered agreement” under these regulations to prevent evasion by banks and community groups. We would expect this issue now to be more fully addressed in pending CRA changes ([see FSM Report CRA32](#)). No deadline was set for reply.

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](#).

- [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.
- **[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.