



# *FedFin Client Report*

---

Thursday, September 22, 2022

## **Senate Republicans Tackle Woke Banking; Democrats Turn Again to Zelle, Fees**

Client Report: REFORM213

### **Executive Summary**

Senate Banking's hearing with big-bank CEOs proved much more combative than HFSC's session yesterday ([see Client Report REFORM212](#)). From the outset, Republican Senators condemned what they characterized as serious threats of banking politicization around social and cultural issues, with Ranking Member Toomey (R-PA) predicting a Republican counter-offensive should his party regain control. He also said that the Fed's decision to join other central banks and supervisors in implementing climate scenario analysis is a precursor to regulatory edicts pressuring banks to divest from energy companies. Republicans also emphasized that high regulatory-capital requirements have undue macroeconomic effects. As [predicted](#), Democrats focused extensively on Zelle and bank fees. There was a testy exchange between Sen. Warren (D-MA) and the CEOs that led the bankers to commit quickly to provide data on Zelle fraud, but not to make consumer refunds. Democrats also demanded that the CEOs end overdraft fees, with the CEOs again highlighting progress toward reducing these even as their products are preferable to payday loans. Chairman Brown (D-OH) closed the hearing as it began by sharply criticizing big banks, lumping regional-bank mergers into this critique without suggesting any action will be taken to stop them in his committee. He also suggested that he and the banks could work together address nonbank regulation and charters.

### **Analysis**

#### ***Opening Statements***

Chairman Brown rebuked the CEOs for harming workers and lower-income and minority Americans, reproaching them also for what he characterized as hypocrisy with regard to overdraft fees and a federal safety net. He expects the banks to end overdraft fees, lower account cost, end forced arbitration, offer affordable home loans, and pay workers and contractors more fairly.

As noted above, Ranking Member Toomey lambasted Democrats and regulators for what he described as their politicization of the banking industry, focusing on hot-button issues

---

Federal Financial Analytics, Inc.  
2101 L Street, NW – Suite 300, Washington, D.C. 20037  
Phone (202) 589-0880  
E-mail: [info@fedfin.com](mailto:info@fedfin.com) [www.fedfin.com](http://www.fedfin.com)

including gun control, ESG, and abortion. Although he believes banks should just do banking, he said that his GOP colleagues will come to match political demands to the “woke” ones from Democrats if the largest banks continue to alter policy in response to liberal priorities.

## Testimony

Today’s testimony was the same as that provided in yesterday’s House Financial Services Committee hearing.

## Q&A

- **Liberalization:** Ranking Member Toomey asked Mr. Dimon if he believes banking regulators have statutory authority to determine the speed of transition to carbon free economy; Mr. Dimon said no – this authority belongs to lawmakers. Sen. Toomey also asked Mr. Dimon if the Fed has power to pressure banks to direct capital where they want; Mr. Dimon said that the Fed is his “judge, jury, and hangman” unless constrained by Congress. Sen. Kennedy (R-LA) told the CEOs they would never win the “uber-woke” sweepstakes. Sen. Cramer (R-ND) asked banks not to respond to “noise in their left ears” and to commit to process all legal and “constitutionally protected” transactions; the CEOs said they would. Sen. Tillis (R-NC) asked the CEOs to confirm that they will continue to serve the fossil fuel industry, called for fewer regulations, and said that the banks can’t possibly fulfill their fiduciary responsibilities to shareholders with an “out of control” CFPB Director and an “in-shambles” FDIC. Sen. Daines (R-MT) voiced concerns about political creep on corporate boards and asked how ideological diversity is maintained; BOA’s Mr. Moynihan upheld that his board’s membership pertains only to members’ corporate seniority and experience.
- **Zelle:** Sens. Menendez (D-NJ) and Warren (D-MA) accused the CEOs of failing to adequately answer [earlier questions](#) regarding Zelle, with Sen. Menendez demanding more information on refunds and referrals; the CEOs apologized across the board for any information left out of their responses and promised to provide full answers quickly. Sen. Warren demanded answers on how many customer fraud claims pursuant to Zelle each bank has received since 2018; CEOs could not provide a precise number although some attempted to provide percentages. Sen. Warren stated that Zelle fraud would cease to be a problem if banks stood behind the product and asked if any of the banks would agree to do so; no one responded positively. Mr. Demchak criticized what he characterized as an excessive focus on Zelle, which he referred to as just one small P2P network out of many, saying that regulating them constitutes a much larger issue.
- **Capital Rules:** Ranking Member Toomey argued that additional regulation and capital requirements bear costs on banks and asked the CEOs to share perspective on the downside of unnecessarily high capital requirements; Mr. Demchak agreed that regulation

could be burdensome and make it more difficult to lend. Sen. Scott (R-SC) asked if credit for small businesses is constrained by stricter capital requirements; Mr. Dimon said that the current capital requirements are hurting his bank and called the recent stress test unnecessary, with other CEOs agreeing. Sen. Haggerty, (R-TN) referring to Michael Barr's recent [speech](#), voiced concerns that increasing capital requirements under adverse economic conditions will be harmful to credit access and lending; CEOs seemed to agree but did not comment.

- **Bank Fees:** Chairman Brown, along with Sens. Menendez and Warnock (D-GA), asked the CEOs to commit to fully eliminating overdraft fees within a year; Mr. Scharf emphasized that one of his bank's products does not involve overdrafts, while Mr. Moynihan and Mr. Dimon argued that full elimination would be counterproductive. Mr. Dimon also argued forcefully that overdraft fees prevent numerous more burdensome costs from being imposed. Sen. Van Hollen (D-MD) asked if the banks had plans to phase out overdraft fees; Mr. Dimon reiterated his position.
- **Nonbank Regulation:** Sen. Warner (D-VA) expressed serious concern over the lack of a regulatory frameworks for nonbanks, saying that the old ideas for new OCC and/or CFPB charters might need a "new look." Mr. Dimon said that over-tight regulation pushed certain services outside the banking sector. Ms. Fraser for called a same-activity, same-regulation regulatory framework. Sen. Warner, addressing Chairman Brown, called for more consumer protection, particularly for innovative financial products.
- **Deposit Rates:** Sen. Reed (D-RI) raised concerns about deposit rates, which he said are stagnant despite rising interest rates, and asked the CEOs why deposit rates are not rising in this scenario; the CEOs generally responded that they are in fact raising deposit rates or are planning to do so.
- **Interest Rate Cap:** Sen. Reed referenced legislation with Chairman Brown that would set a national interest rate cap of 36% ([see Client Report PREEMPT37](#)) and asked if the CEOs approved. Mr. Moynihan and Mr. Scharf both agreed with the principle of this bill but warned of unintended consequences in constraining credit. Mr. Dimon applauded the effort to stop payday lenders, saying that – while a 36% cap would work for some products and services – it should be modified to allow banks to make small-dollar, short-term loans.
- **Payment Access:** Sen. Van Hollen called for fast implementation of FedNow and called for consideration of legislation requiring institutions to make funds available as soon as they are deposited.