



FedFin Client Report

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HFSC GOP Sets Table for Rocky CFPB Relationship

Client Report: CONSUMER45

Executive Summary

Despite early warm goodbyes to outgoing Chairwoman Waters (D-CA), GOP members wasted no time trading blows at a fiery HFSC session today with CFPB Director Chopra. As [anticipated](#), incoming Chair McHenry (R-NC) and committee Republicans focused their efforts on what they call “regulation by guidance,” accusing the Director of trying to influence the behavior of firms through nonbinding releases and avoiding the public rulemaking process. In his testimony and answers to members, Director Chopra said that the Bureau is watching voluntary industry action on Zelle fraud before taking action and is more broadly focused on payment-system standards that ensure neutrality and strict data-privacy. Republican members also highlighted how the Bureau’s proposed small-business reports ([see FSM Report SMBUS27](#)) put undue regulatory burden on small banks. Additionally, Rep. Loudermilk (R-GA) inquired about the appropriateness of making banks liable for P2P fraud. Democrats refrained from questioning the Bureau’s actions, instead asking about its bigtech inquiry, the resurgence of ARMs, and blackbox algorithms. Reps. Cleaver (D-OH) and Vargas (D-CA) also continued their attacks on crypto from yesterday’s [hearing](#), calling it dangerous and useless.

Analysis

Opening Statements

In her final hearing as HFSC Chair, Chairwoman Waters praised the CFPB for its work on appraisal biases, overdraft fees, and monitoring of crypto and fintech risks to consumers. As an olive branch to the incoming Chairman, she withheld GOP criticisms and lauded bipartisan efforts on stablecoin legislation. Incoming Chairman McHenry did not share this sentiment, attacking the CFPB. “Similar to his promise to Chairman Gensler yesterday, Mr. McHenry assured the Director that he would frequently appear in front the Committee.

Testimony

In his written testimony, Director Chopra highlights concerns with nonbank payment providers, noting their access to extensive personal data now being used for non-payment purposes in ways that may undermine market competitiveness. He also reinforced the need for payment providers to use personal information in a neutral fashion to execute transactions,

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noting the inquiring into access and other policies previously announced after PayPal temporarily limited customer access based on personal belief. He also urged Congress to enact legislation mandating firewalls between a firm's utility-payment functions and its other activities, noting its importance not only for payment-service entities, but also tech platforms. He also called for legislation to modernize privacy law, expanding whistleblower awards, and encouraging relationship banking; no details on how to do so are provided.

Q&A

- **Regulating by Guidance** - A majority of Republican members slammed the Bureau for attempting to influence the behavior of firms through materials, arguing that it is an attempt to skirt the public rulemaking process. Reps. Perlmutter (D-CO), Vargas, and Casten (D-IL), along with Director Chopra, defended the Bureau, argued that the guidance is a transparent method to inform financial firms of the Bureau's thought process and prevents a slew of enforcement actions.
- **Crypto** - Chairwoman Waters asked Director Chopra what he thought should be Congress's priorities on crypto in the payments systems. Mr. Chopra pointed to stablecoins, arguing for the need to prevent runs, ensure comprehensive fraud protections, and allow for a real time payment system that scales to everyone's benefit.
- **Bigtech** - Chairwoman Waters asked Director Chopra for a status update on the Bureau's inquiry into bigtech and for any risks it has identified; Mr. Chopra emphasized the need for a neutral payment system, stressing that bigtech's entry into the sector would give it unprecedented and concerning leverage over user data. He also indicated that the Bureau will likely release a series of reports but gave no timing. Under questioning from Rep. Sessions (R-TX), Mr. Chopra also said that bigtechs operate in a manner that would be prohibited for banks, referring to their payment ventures.
- **Fintech** - Rep. Loudermilk asked Director Chopra if forcing banks to be liable for P2P fraud would incentivize scammers to target bank customers. The Director reassured Mr. Loudermilk that the Bureau had not changed any rules in P2P fraud yet and agreed that the Bureau should not enable new forms of fraud by regulating against others. He also stated that he was cautiously optimistic about changes already being made in the industry and that the Bureau is looking into whether UI designs can help prevent fraud. Mr. Loudermilk also argued that the CFPB should consider using the civil penalty fund to compensate fraud victims in place of banks.
- **Small Business Data Reporting** - Reps. Wagner (R-MO), Williams (R-TX), and Hill (R-AR) opposed the implementation of Section 1071 of Dodd Frank, arguing it would levy an undue regulatory burden on small businesses. Director Chopra agreed on limiting the burden but reminded the members that the Bureau was under court order to finalize the rule, adding that the Bureau is considering a longer implementation period. In response to Reps. Velasquez (D-NY) and Sherman (D-CO), Mr. Chopra confirmed that the rule will be finalized by the end of March.

- **Data Privacy** - Rep. Hill asked Director Chopra why its data privacy ANPR does not cover nonbank institutions or address if banks will be liable for data breaches after the affected data leaves the bank. Mr. Chopra stated that the Bureau is merely starting with depository accounts and credit cards ([see FSM Report DATA3](#)) and will eventually address nonbanks. He stressed the need to implement comprehensive data safeguards, adding that the Bureau may need Congressional direction on addressing bank liability. Rep. Casten asked the Director if the Bureau has noted any changes in industry behavior since the publication of his blackbox algorithm guidance ([see FSM Report FAIRLEND11](#)), with him stating that many firms are now working to be able to sufficiently explain the rationale behind adverse actions. Mr. Casten also asked if the CFPB has visibility into third-party algorithms, with the Director explaining that they would if the algorithm provided material benefit to the data provider but could not elaborate on any specifics.
- **ARMs** - Rep. Dean (D-PA) asked the Director if he was concerned about the resurgence of ARMs; he replied that he was not currently concerned as most ARMs still follow the ability-to-pay standard and the qualified mortgage rule. He noted that there are risks, but not at the level of the financial crisis.
- **Overdrafts** - Rep. Barr (R-KY) argued that the CFPB had no authority to regulate overdraft fees, to which the Director did not have a chance to respond. In light of industry trends away from overdrafts, Rep. Maloney (R-NY) asked if a single Federal overdraft standard would be easier to navigate for consumers. Mr. Chopra stated that he is working with supervised institutions and other regulators to determine the best solution but is encouraged by industry's direction.
- **Resolution Plan Vote** - Rep. Lucas asked Director Chopra to clarify his statement following the FDIC vote on G-SIB resolution plans, with Mr. Chopra stating that he was questioning the assumption that Chapter 11 is realistic for a giant firm. He noted that firms self-financing a Chapter 11 resolution does not exist elsewhere in the economy.