



# *FedFin Daily Briefing*

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Wednesday, January 11, 2023

## **CFPB Tackles Mandatory Arbitration, Auto-Agree Contracts**

Intensifying its scrutiny of nonbanks, the CFPB today [proposed](#) a rule establishing a public registry of supervised nonbanks' terms and conditions in "take it or leave it" form contracts for consumer financial products and services. This initiative follows the Bureau's proposal for an overall registry of nonbank retail-finance companies and – [like it](#) – it is not only problematic for these entities, but likely also precedent setting for bank providers. FedFin will shortly provide clients with an in-depth analysis of the proposal, which targets contracts the Bureau believes require a consumer to waive legal protections (including those mandating arbitration), limit consumer rights, or restrict consumer complaints or reviews. Examples include terms and conditions that waive servicemember legal protections, undermine credit reporting rights, limit lender liability for bank fees triggered by a lender's debits, or include certain waivers in mortgage contracts. In his [statement](#) on the proposed rule, Director Chopra cites asymmetries in corporate and consumer power warranting intervention, also noting international efforts such as those in the U.K., Japan, and E.U. to curtail unfair contract terms. He also noted that data from the registry would inform future Bureau examination priorities. Comments are due the later of either March 13 or thirty days after *Federal Register* publication.

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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 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](#).

- [CRYPTO38](#): Karen Petrou's [memo](#) earlier this week and her comments to the [American Banker](#) about Silvergate have sparked many client questions.
- [GSE-011123](#): As the Fed has hiked interest rates, mortgage rates have of course also gone up, sending a sudden chill through the residential market and putting home ownership even more out of reach for all but those for whom the home equity they still have after prices correct suffices for long-term wealth accumulation.
- [GSE-010523a](#): FHFA's latest [scorecard](#) for Fannie, Freddie, and CSS reiterates Director Thompson's overarching objectives for Fannie and Freddie in the new era of equitable finance, CRT, and capital compliance.
- [GSE-010523](#): As we previously [noted](#), the U.S. banking agencies will finally, finally, finally get around to proposing their version of the Basel IV capital rules more recently dubbed the "end-game" standards.
- [CRYPTO37](#): The Basel Committee has finalized its second try at global standards governing bank cryptoasset exposures, laying out a path that U.S. agencies plan quickly to implement even as Congress continues to wrestle with this fast-changing sector.
- [DEPOSITINSURANCE117](#): In the wake of increasing instances in which customers are confused and even misled about the extent to which fintech and cryptoasset holdings are insured deposits, the FDIC

is proposing new standards addressing this problem as well as ways to modernize IDI representations of their own FDIC-insured offerings in branches and through the fast-changing array of retail banking delivery channels.

- **[LIBOR9](#)**: Shortly before its statutory year-end deadline, the Federal Reserve finalized its proposal defining legacy-contract benchmarks when there is no clear, practicable contractual fallback rate.
- **[CONSUMER47](#)**: The CFPB is proposing to create a public registry of certain enforcement actions that would initially cover nonbanks (including BHCs) with a goal of drawing public and enforcement-agency attention to what the Bureau's director calls "serial offenders."
- **[GSE-122122](#)**: Finally taking what was supposed to be an "interim" [final rule in 2009](#), FHFA yesterday finalized a variation on Mark Calabria's 2020 new-product [proposal](#).
- **[CONSUMER46](#)**: In this report, we provide an in-depth assessment of the CFPB's unprecedented \$3.7 billion [settlement](#) earlier today with Wells Fargo (WFC).
- **[FSOC28](#)**: [As promised](#), this FedFin report provides an in-depth analysis of FSOC's 2022 [annual report](#), focusing on findings with near-term policy implications.
- **[GSE-121922](#)**: [As promised](#) Friday when FSOC's [annual report](#) was released, we here go into depth on its implications for residential housing.
- **[CONSUMER45](#)**: 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.
- **[CRYPTO36](#)**: Senate Banking Committee Chairman Brown (D-OH) today backed away from prior statements about crypto legislation, focusing instead on the prospect of additional investigations into failing crypto firms and ongoing work with Secretary Yellen on a government-wide regulatory framework.