



FedFin Weekly Alert

Monday, February 13, 2023

❑ STARTING-GATE SIGNALS

As is traditionally the case, Congress kicked off legislative action upon the President's State of the Union Address even if the response to Mr. Biden was often decidedly untraditional. Last week was the first of what seem sure to be many busy ones and Senate Banking began work on one of its Chairman's top priorities – housing – ahead of an opening salvo on another high-impact concern – crypto – later this week. Key take-aways so far:

- Following HFSC's full Committee meeting on [China](#), there's only one conclusion: the fight over anti-China financial standards will be about how tough they will be, not if there should be any.
- HFSC's Financial Institutions and Monetary Policy Subcommittee will take issues [one by one](#), notching victories on its chairman's priority list – e.g., de novo capital relief – likely to win bipartisan support before tackling tough questions such as data privacy and engaging full-on with financial regulators over matters such as the capital rewrite and the CFPB's red-hot credit-card late-fee proposal ([see FSM Report CREDITCARD36](#)).

Headlines From the Past Week's Daily Briefings

[February 6](#)

- **FRB-NY Confirms Regional-Bank Struggle Following LIBOR Transition** - A new Federal Reserve Bank of New York staff study and [blog post](#) reaffirms many regional-bank fears about the LIBOR transition not fully allayed by compromise provisions in the Fed's recent benchmark-setting regulation ([see FSM Report LIBOR9](#)).
- **Barr Prioritizes Privacy, Small-Bank Capital, FSOC Restraints** - A new staff [memo](#) provides not only the agenda for the House Financial Institutions & Monetary Policy Subcommittee, but also the priorities Chairman Barr (R-KY) will pursue with regard to financial regulation.

[February 7](#)

- **CFPB Extends Digital Marketing Reach To "Pay-To-Play" Platforms** - Expanding its reach to other forms of digital marketing ([see FSM Report FINTECH30](#)), the CFPB issued

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an [advisory opinion](#) stipulating that what it calls “pay-to-play” consumer platforms presenting mortgage and settlement options are likely to violate the law.

- **High-Impact Fed Charter Policy Takes Effect** - The *Federal Register* [includes](#) the FRB’s policy statement rejecting the “states as laboratories for change” construct by conforming state member bank powers largely only to those authorized for national banks.
- **GOP, Democrats Vie for Toughest Anti-China Stance** - As we [anticipated](#), at the full HFSC Committee hearing on China, Chairman McHenry (R-NC) made it clear that he intends action addressing emerging financial and economic risks, reiterating principles such as a commitment to free markets, opposing policies that stifle innovation, and preventing “malign” financial activities or interests.
- **Barr Backs Short-Term, Small Dollar Lending, Flexible Public-Welfare Option** - In [remarks](#), Fed Vice Chair Barr stressed the need to eliminate discrimination in banking, noting the importance of the CRA rewrite ([see FSM Report CRA32](#)) to address redlining and community development.

February 8

- **Biden Puts His Stamp On CFPB Credit-Card Fee Controls** - Scuttling industry expectations that the CFPB’s credit-card fee [clampdown](#) will never be implemented, President Biden [zeroed in](#) on his administration’s campaign to eliminate “junk” fees, including “exorbitant” overdraft fees and credit card late fees.
- **Senate GOP Launches Anti-Woke Attack** - Accelerating the GOP’s anti-woke endeavor, Sen. Kevin Cramer (R-SD) and 36 GOP senators have [introduced](#) S. 293 to impose strict sanctions on banks that provide or deny financial services for what the senators consider political reasons.
- **Treasury: Happy In The Cloud If It Doesn’t Rain** - In its long-awaited [report](#) on the systemic implications of cloud computing, Treasury today encouraged more rapid adoption even as it pointed to systemic-risk considerations.
- **HFSC Subcomm: Privacy Compromise May Not Prove Impossible** - The kick-off hearing by HFSC’s Subcommittee on Financial Institutions and Monetary Policy suggested that Chairman Barr (R-KY) will move deliberately on his priorities even as full Committee Chairman McHenry (R-NC) pursues higher-profile items such as anti-China [policy](#).
- **BIS Renews Campaign For Bigtech Systemic Standards** - Reiterating longstanding BIS [concerns](#) about bigtech platforms, General Manager Agustín Carstens [updated](#) the changes he believes are urgently needed to address growing systemic risk in this sector.

February 9

- **FHFA Forecasts Substantive FHLB Action** - Ahead of comments on the FHLB System by Director Thompson (see forthcoming FedFin analysis), an FHFA official’s op-ed in

the [American Banker](#) for the first time makes it [clear that hearings](#) will lead to substantive action.

- **Housing Finance Plays Second Fiddle At Senate Banking** - The Senate Banking Committee opening hearing for this Congress focused on public, rural, and rental housing.

February 10

- **Waller Reiterates Fed's Wary Cryptoasset Policy** - In [remarks](#), FRB Governor Waller reiterated the Fed's wary approach to cryptoassets, repeating the Fed's requirements ([see FSM Report CRYPTO31](#)) for banks that wish to engage with crypto customers or activities.
- **Hsu Reprises, Expands Bank Merger Reform** - In [remarks](#), the OCC Chief Counsel on behalf of Acting Comptroller Hsu stressed the need to update competition metrics, financial stability considerations, and community assessments in bank merger reviews, but gave no indication of when new merger policy may be finalized.
- **FHFA Outlines Substantive FHLB Reform Agenda** - As [anticipated](#), FHFA Director Thompson called the status quo of the FHLB system unacceptable and said that FHFA will make "meaningful" recommendations to improve the sector.

This Week

Tuesday, February 14

Senate Banking Hearing entitled: "Crypto Crash: Why Financial System Safeguards are Needed for Digital Assets." [10:00 am, Dirksen Senate Office Building 538]. Witnesses: **Mr. Lee Reiners**, Policy Director, Duke Financial Economics Center; **Ms. Linda Jeng**, Visiting Scholar on Financial Technology, Georgetown Institute of International Economic Law; Adjunct Professor of Law; and **Professor Yesha Yadav**, Vanderbilt University Law School.

Wednesday, February 15

SEC Open Meeting. [10:00 am, webcast]. Matters to be discussed: The Commission will consider whether to adopt rules and rule amendments to shorten the standard settlement cycle for most securities transactions; whether to adopt rule amendments to require investment advisers to maintain certain related records; whether to propose to amend and redesignate rule 206(4)-2 under the Investment Advisers Act of 1940 ("Advisers Act") related to the safeguarding of client assets; and consider proposing corresponding amendments to the investment adviser recordkeeping rule and to Form ADV under the Advisers Act.

Future Events of Note

Tuesday, February 28

Senate Banking Hearing entitled: "Advancing National Security and Foreign Policy through Sanctions, Export Control, and Other Economic Tools." [10:00 am, webcast].
Witnesses: TBD.

Tuesday, March 7

Senate Banking Hearing entitled "The Semiannual Monetary Policy Report to the Congress." [10:00 am, webcast]. Witnesses: **The Honorable Jerome H. Powell**, Chairman, Board of Governors of the Federal Reserve System.

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](#).

- **[CREDITCARD36](#)**: Following on a controversial advance notice of proposed rulemaking, the CFPB has now released an NPR setting specific standards for credit-card late fees that also eliminates the inflation adjustments established by the Federal Reserve when implementing the 2009 credit-card law.
- **[GSE-020623](#)**: A new [post](#) from the Federal Reserve Bank of Atlanta summarizes key findings from recent pandemic-era mortgage refinancing research, reiterating [prior findings](#) that more White mortgage borrowers got lower refinancing interest rates in 2020 compared to Blacks.
- **[CHARTER29](#)**: In conjunction with rejecting an uninsured crypto bank's application for Federal Reserve membership, the Federal Reserve issued a policy statement conforming state member bank powers only to those authorized for national banks even if the state member is an uninsured depository institution.
- **[CONSUMER49](#)**: Using one of its controversial edicts to set what some consider a new rule, the CFPB has opined that negative-option or "subscription" marketing of consumer-financial products or services may be unfair, deceptive, or abusive (UDAAP) and thus subject to significant sanction for both the provider and any third parties with which it works.
- **[GSE-012323](#)**: Under Director Thompson, FHFA's top policy priority is [equitable housing](#).
- **[CONSUMER48](#)**: Building on its proposed nonbank registry related to enforcement orders, the CFPB is now also proposing a public registry requiring posting of provisions in consumer-finance contracts the agency believes threaten consumer legal or free-speech rights when issued by supervised nonbanks.
- **[GSE-011923](#)**: We will shortly send clients an in-depth analysis of the CFPB's latest controversial [proposal](#) which would establish a public registry on which supervised nonbanks

would file a lot of data on any form contracts they require which includes covered provisions the Bureau thinks unfairly and even dangerously lead consumers to abandon important protections.