



FedFin Daily Briefing

Wednesday, February 1, 2023

CFPB Set To Quash Credit-Card Late Fees

Taking action as anticipated following its June ANPR ([see FSM Report CREDITCARD35](#)), the CFPB today [released an NPR](#) that would curtail credit card late fees the Bureau calls “excessive,” moving ahead also with one aspect of the White House competition agenda. The proposal would reduce the annual burden of late fees by \$9 billion per year. We will shortly provide clients with an in-depth analysis of the proposal, which would revise the Fed’s longstanding rules and mandate a new standard ensuring that fees are “reasonable and proportional” to the costs incurred by issuers. As with last year’s ANPR, the proposed rule targets inflation adjustments, which it would eliminate, and the Fed’s immunity provision, which would be lowered to \$8. It would also cap late fees at 25% of the required minimum payment. Comments are due by the later of April 3 or thirty days after *Federal Register* publication, with the list of questions laying out several still more stringent fee constraints. The CFPB’s action comes in concert with the president’s Competition Council decision to take on an array of “junk fees.” According to the [fact sheet](#) released ahead of the meeting this afternoon, the only other mention of financial services pertains to the Bureau’s actions on overdraft fees and the President’s request that Congress pass a wide-ranging Junk Fee Prevention Act.

Comment Deadline Set For CFPB Contract Registry Proposal

The *Federal Register* today includes the CFPB’s [form-contract registry proposal](#). As noted ([see FSM Report CONSUMER48](#)), the Bureau’s NPR would establish a public registry requiring nonbanks to post contract provisions which the agency believes threaten consumer legal or free-speech rights. Agreements such as those for website use would also be covered, giving the Bureau significant insight into nonbank payment and tech-platform companies and increasing the odds of enforcement action. Comments are due by April 3.

Brown, Democrats Press Thompson On Enterprise Loan Sale Programs

Ahead of a housing hearing as soon as next week, Senate Banking Chairman Brown (D-OH) and four other Democrats today sent a [letter](#) to FHFA Director Thompson requesting a review of Fannie and Freddie’s nonperforming and reperforming loan-sales programs. Arguing that they do not meet homeownership-preservation standards, the senators reiterate that they also cater to institutional investors “by design.” The letter thus calls for increasing the percentage of nonperforming loans sold to community and nonprofit organizations as well as improving program transparency and accountability. An update is requested by March 10.

McHenry Confirms Privacy, Crypto Priorities; Rewrites HFSC Rules

At an HFSC organizational meeting, Chairman McHenry (R-NC) today emphasized that he wants to work with Democrats, but much of what he said is unlikely to facilitate this. For example, he noted with regard to crypto legislation that he wants to end the SEC's enforcement-focused policy; as previously noted, any crypto legislation curtailing the SEC will run afoul of Democratic views in both the House and Senate. To the extent the chairman does so by establishing new law to govern crypto assets, he will find much with which Democrats will agree; if the measure instead directly tackles the SEC, then final legislation will be challenging. The chairman, as anticipated, also promised oversight hearings with Mr. Gensler, noting he will also go after the Administration on general "woke" policy initiatives. The chairman also promised a return to decorum as well as regular order. He will thus end the practice of rolling votes until all action in a mark-up is concluded. If enforced, this rule change will speed markups as Members will seek final action on their proposals in a more disciplined way to ensure that they are present for a vote determining committee action.

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](#).

- **[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.
- **[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.