



FedFin Daily Briefing

Tuesday, February 7, 2023

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 today issued an [advisory opinion](#) stipulating that what it calls “pay-to-play” consumer platforms presenting mortgage and settlement options are likely to violate the law. The Bureau here targets digital comparison-shopping platforms that steer shoppers to lenders using what it defines as pay-to-play tactics rather than providing objective information enabling shoppers to make informed selections. Although this advisory is specifically targeted to mortgages because of the broad reach of the Real Estate Settlement Procedures Act, it has significant implications for any consumer-finance platform purporting to provide objective product-selection advice, a tactic with far-reaching implications should the Bureau decide to apply it to tech-platform and person-to-person payment companies. Actions now specified to violate the law include presentations of lender options on digital platforms based on referral fees that are not disclosed to consumers and steering behaviors favoring higher-paying or preferred providers, such as platform formulas designed to steer shoppers to providers in which the operator has a financial stake. In a [statement](#) today, Director Chopra called comparison-shopping markets that engage in steering behaviors “rigged” and “anti-competitive.”

High-Impact Fed Charter Policy Takes Effect

The *Federal Register* [today](#) 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. The statement is now effective. As noted ([see FSM Report CHARTER29](#)), the approach for the first time expressly applies the same-risk/same-rule construct of global standard setters. It also sharply limits the ability of states to empower uninsured charters not only focused on cryptoasset activities, but also other nontraditional ones such as those involved in certain fintech “partnerships.” Payment-system access will now be more circumscribed, limiting the comparative advantage non-traditional charters have or hope to enjoy as well as reducing competitive disparities between state-member and national charters.

GOP, Democrats Vie for Toughest Anti-China Stance

As we [anticipated](#), at today’s 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. Ranking Member Waters (D-CA) wants to go farther, barring hedge funds and other US companies from investing in Chinese firms that pose a national-security threat, implicitly supporting Democratic proposals for outbound capital controls which GOP Members strongly

opposed. Rep. Luetkemeyer (R-MO), noting his [bill](#) H.R. 804 that prohibits MSBs from using the Digital Yuan, reiterated privacy concerns about the Chinese CBDC. Rep. Lynch (D-MA) highlighted the threat of the [mBridge](#) project – an international payments pilot between China and three other countries – and pushed to gather buy-in from SWIFT countries to strengthen it as a counter. The Chairman will surely schedule subsequent hearings on China and action on the Republican [proposals](#) is likely.

Barr Backs Short-Term, Small Dollar Lending, Flexible Public-Welfare Option

In [remarks](#) today, 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. However, he was silent as to the date by which the agencies are likely to issue the long-awaited final rule. Mr. Barr also was considerably more sympathetic to small-dollar, short-term lending than regulators in the past, suggesting Fed-supervised banks may now be able to offer this service with less risk of examiner override. He also endorsed the Bank On initiative as crucial to expanding access to credit. The Fed will also soon liberalize its public welfare test. Still, Mr. Barr reiterated the importance of ensuring fair access to financial services in M&A evaluations and noted that the Fed is working with the CFPB to combat UDAAP.

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](#).

- [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.
- [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.