FedFin Daily Briefing

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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 last night zeroed in on his administration's campaign to eliminate "junk" fees, including "exorbitant" overdraft fees and credit card late fees. Citing $1 billion per year that his administration has helped save consumers in overdraft fees and a 75% reduction in credit card late fees, he again pressed Congress to pass the Junk Fee Prevention Act; as previously noted, it will not advance in the House. The President also noted that his administration is proposing to quadruple taxes on corporate stock buybacks and pleaded for Congress to pass bipartisan legislation strengthening antitrust enforcement, especially for big online platforms. Clients will receive our in-depth analysis of the CFPB's controversial initiative later today.

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. Among other things, the bill would codify the OCC's "fair-access" rule (see FSM Report **ESG3**), an initiative towards the end of the Trump Administration rapidly revoked when President Biden took office. Unlike Sen. Cramer's prior effort in this area (see FSM Report **SOCIALIMPACT**), this measure goes beyond supervisory sanction also to deny discount-window privileges to banks with assets over $10 billion if they lend for non-commercial reasons. The bill would also require banks to provide written justifications for lending decisions and apply a series of constraints to payment-card networks. It will not advance in the Senate but is sure to get considerable airtime there along with serving as the basis for legislative proposals in the House.

Treasury: Happy In The Cloud If It Doesn't Rain

In its long-awaited report today on the systemic implications of cloud computing, Treasury today encouraged more rapid adoption even as it pointed to systemic-risk considerations. Barriers to cloud adoption include insufficient transparency to support due diligence and monitoring, an insufficient talent pool, operational risk, market concentration and "outsized" marketing power, and international regulatory fragmentation. Treasury will now create a Cloud Services Steering Group addressing these concerns as well as systemic risk related to market concentration due to following the conclusion that that a systemic failure or data breach at one major CSP could degrade the performance of systemic financial institutions or a single financial market infrastructure. To address systemic risk, Treasury will foster interagency coordination, close existing data gaps, enhance public and private sector coordination and interagency information sharing, enhance regulatory guidance, and support development of international standards. It will also work toward sector-wide measurement of cloud services concentration and seek to improve incident response and communication channels between financial institutions, cloud service providers, and regulators.

HFSC Subcomm: Privacy Compromise May Not Prove Impossible

Today's 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. As anticipated, Chairman Barr pressed for action on his legislation (H.R. 758) to increase de novo charters and on bank service company examinations and SIFI designation, but discussion focused only on de novos and consumer data privacy. Ranking Member Foster (D-IL) offered a compromise, suggesting that like-minded states could form collective standards, reducing the number of privacy regimes without the need for federal preemption. Chairman Barr and Rep. Fitzgerald (R-WI) also signaled GOP opposition yet again to any private right of action. Citing FRB Vice Chair Barr's reexamination of the US capital regime, Rep. Luetkemeyer (R-MO) said he feared that capital increases will adversely affect lending to LMI consumers, asking the ABA witness how higher capital requirements would affect his bank; he replied that any increase would saddle the bank's lending ability. Rep. Fitzgerald asked the same witness if a definition of banking markets in merger reviews would encourage cross-town mergers; the ABA witness replied that the entire definition of competition – including defining banking markets – needs to be reviewed and modernized. On the Democratic side, Rep. Pressley (D-MA) argued that postal banking would provide a solution to banking deserts.

BIS Renews Campaign For Bigtech Systemic Standards

Reiterating longstanding BIS concerns about bigtech platforms, General Manager Agustín Carstens today updated the changes he believes are urgently needed to address growing systemic risk in this sector. As before, the BIS favors complementing existing big-tech activity-based rules with group-wide entity-based requirements, but Mr. Carstens now seeks what he calls a "holistic" approach to big tech regulation. This would synthesize two other approaches – a "segregation" approach and an "inclusion" approach – to combine prudential oversight of big-tech financial services under a holding company framework with group-wide requirements for governance, conduct, operational resilience, and financial soundness. He thus rejects a third regulatory strategy – a so-called "restriction" approach – because it would not control for asymmetric information advantages. Mr. Carsten also points to significant issues related to bigtech cloud capacity, highlighting an issue on which the U.S. today took initial 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.

- **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: I**n 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.

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