FedFin Daily Briefing

Thursday, February 16, 2023

House GOP Slams Beneficial-Ownership Database

Reiterating longstanding concerns, HFSC Chairman McHenry (R-NC) and National Security, Illicit Finance, and International Financial Institutions Subcommittee Chairman Luetkemeyer (R-MO) submitted a comment letter today strongly opposing FinCEN's latest beneficial ownership NPR. The letter argues that the proposal deviates from Congressional intent on what information may be collected, how it is stored, and when and by whom it is accessed. The Members pressed FinCEN to create a secure process via which financial institutions access the beneficial-ownership database following clear customer consent. They also call for the final rule to require FinCEN to notify financial institutions of database changes. We expect FinCEN to resist requests for customer consent due to the risks this might pose to an effective database; Democratic opposition to changes to underlying law (see FSM Report **AML134**) will continue to block GOP action redesigning the beneficial-ownership database by law.

House GOP Decries SEC Crypto-Custody Construct

Reflecting GOP concerns about the SEC's new custody proposal as well as broad GOP objections to much of what Chairman Gensler does, HFSC Republicans today tweeted that the proposal will not ensure sufficient investor safeguards in part because restrictions on bank custody services remain. As we noted yesterday, the extent to which this capital barrier remains will drive the extent to which banks enter this sector; without bank relief, crypto companies could be effectively frozen out of qualified custodians because the proposal also makes it far more difficult for crypto platforms now engaged in custody services to become qualified. Although strongly endorsing the need for stringent custodial standards, the GOP also states that the extent to which stiff new custody rules should apply to all assets should be resolved by Congress and may well be outside the scope of the Commission's statutory authority.

Biden Order Reasserts Racial-Equity Agenda

Reiterating much of his last racial-equity executive order, President Biden today issued an order directing federal agencies to establish equity teams and comprehensive strategies to implement the order's new equity initiatives. This includes supporting continued equity training and leadership development for staff across all levels of federal-agency workforce. The order deals exclusively with actions by the federal government and then only with regard to executive-branch bodies, not independent agencies such as the financial regulators. The order also establishes a White House Steering Committee on Equity that will coordinate government-wide efforts to advance equity. Regarding artificial intelligence, it notes that agencies must use AI to advance equity and roots out design bias without addressing complex AI issues such as those now being governed by the CFPB to enhance racial equity (see FSM Report **FAIRLEND11**).

FSB Pledges Further Work on DeFi Financial-Stability Risks

The FSB today released a report finding that DeFi's financial stability risks are limited but may grow should linkages increase to traditional finance. As noted in IOSCO's prior assessment of DeFi (see *Client Report* **DEFI**), the FSB notes risks with systemic implications such as underlying cryptoasset volatility, liquidity mismatches, and opaque governance. The report also notes significant data gaps that prevent the FSB from regularly monitoring DeFi's risks. To address its concerns, the FSB will incorporate DeFi analysis into its regular cryptoasset market monitoring, explore ways to measure the interconnectedness of DeFi with the traditional financial system, and consider whether to address DeFi-specific risks in its crypto policy recommendations (see FSM Report **CRYPTO34**). The release accompanying the report also notes that FSB will try to determine which DeFi activities should fall within the regulatory perimeter and thus subject DeFi entities to additional prudential and investor safeguards. The report does not otherwise provide any policy recommendations, only promising future analysis.

CFPB: Unfair Credit-Card Competition Evident Via Data Suppression

Following strongly-worded letters to six credit card lenders last May, the CFPB today concluded that these companies have suppressed payment data for competitive purposes. Responses to the initial letter are said to indicate that the companies began to suppress data shortly after one of them did so, with actual-payment reporting falling by more than half from 88 percent in late 2013 to only 40 percent by 2015 even though two of the six companies had not furnished actual payment information since at least 2012. The Bureau notes that none of the companies intends to furnish actual payment information voluntarily, with some citing concerns over first-mover disadvantage and even recommending that the CFPB proceed with a rulemaking to end data suppression. The Bureau does not advise on whether it now contemplates such a rulemaking or a referral to the FTC, saying only that borrowers' creditworthiness is impaired because of these data-suppression practices and this may be out of step with what will come of the CFPB's rulemaking on consumer data rights (see FSM Report **DATA3**).

FHFA Floats Single-Family ESG Bonds

Building on its equitable-finance initiative, FHFA today released a request for input on the benefits and risks of Fannie and Freddie single family social bonds. The GSEs now issue multifamily social bonds, and FHFA's Director clearly sees benefits to expanding this program judging by her statement in the release announcing the RFI. Social bonds are described as instruments designed to benefit borrower sustainability, affordability, and/or equity – a description with which Republicans may well strongly disagree given their recent attacks on all things ESG. The FHFA seeks input on what social outcomes the program should pursue, how a loan would be deemed eligible, market risks, safety and soundness,

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and additional disclosures. We will shortly provide clients with an in-depth analysis of this RFI; comment is due by April 17.

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.

- **CRYPTO39:** Although Chairman Brown (D-OH) remained non-committal on the need for crypto legislation, he emphatically called for reform to protect consumers and investors.

- **GSE-021323:** Following our initial report, we turn here to a more detailed analysis of what's in store for the Home Loan Banks following the Brookings high-impact forum on Home Loan Banks that are also facing far more unflattering public attention than has been their fate for years.

- **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.

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