



FedFin Daily Briefing

Friday, February 24, 2023

HFSC Starts With A Bang

On Tuesday, HFSC Chairman McHenry (R-NC) honors his commitment to advance significant legislation with what is sure to be a raucous mark-up. Most importantly, Chairman McHenry will bring up a bill yet to be introduced rewriting consumer-data privacy standards. At the moment, key sections of the draft – e.g., enforcement – are blank because Mr. McHenry has faced challenges rounding up enough Republicans to override Democratic opposition to provisions that could, for example, bar private rights of action and mandate federal preemption. The bill would also override the CFPB’s effort ([see FSM Report DATA3](#)) to establish consumer data rights, although provisions extending the privacy regime to all financial companies would go farther than the Bureau has so far proposed in certain respects. Following the record set at a recent [hearing](#) and reflecting pressures we will analyze later today in our weekly report, the panel also has seven measures set for votes to punish China by way of isolating it from the U.S. financial system. The [staff memo](#) details these measures, the most significant of which (H.R. 554) would require an inventory of financial institutions providing services to senior Chinese officials that would then be made public. No express sanctions are demanded, but the bill’s intent is clearly to force them via reputational risk or subsequent, direct U.S. action. Most of the other anti-China bills call for reports, studies, or efforts with other entities; we expect most, if not all, of these to pass the House, with progress in the Senate complicated as always by Chairman Brown’s seeming reluctance to mark up legislation. The HFSC mark-up will also act on bipartisan bills under the Defense Production Act to increase the availability of key biomedical supplies and make changes related to third-party service providers. We will monitor the session, which should be more conclusive given HFSC’s new rule requiring voting as an issue is debated, rather than in deferred panels of roll-call votes at close of business or on subsequent days.

FHFA New-Product Vetting Delayed

FHFA today [pushed back](#) the effective date of its New-Product Rule by sixty days on grounds that more time is needed for the agency and the GSEs to develop the internal processes necessary for compliance. The former effective date was February 27; the new effective date is April 28. As we noted in our [in-depth analysis](#), the rule requires the Enterprises to notify FHFA of new activities and then to obtain approval of any activities deemed to be new products, with FHFA having considerable discretion to determine if a new offering is an activity or a product. As a result, the final rule may slow down some of the GSEs’ more controversial credit-enhancement or financing offerings as well as impede innovation under way to achieve FHFA’s equitable-housing objectives.

HFSC Set To Lock Horns On Data Privacy

With the opening quote in his [release](#) making clear that this will be a partisan fight, HFSC Chairman McHenry (R-NC) formally introduced the privacy legislation that, as noted earlier

today, is now set for Tuesday's mark-up. The measure includes several provisions Democrats support in broad terms; for example, it makes it unlawful for financial institutions to make use of consumer or customer data without consent, provides more clear statutory authority for consumer control of personal data, includes new disclosure and opt-out requirements, and extends GLBA privacy standards from banks to data aggregators. The bill also provides for the "right to be forgotten," giving consumers the power to demand that personal data be deleted unless certain exceptions apply. However, the section by section suggests that state insurance regulators would set the rules to implement its requirements, an unusual provision that – if accurately represented in this document – not only carves out the CFPB as Republicans surely intend, but also does the same for federal and state banking agencies. The bill also provides for federal preemption, typically a drop-dead provision that has doomed final action on many previous efforts to rewrite consumer data-privacy law.

CFPB Begins Administrative Adjudication, Speeding Enforcement Actions

The CFPB today [finalized](#) new adjudication rules that add administrative adjudication to its usual course of seeking redress in federal district courts. The agency argues that predecessors from which Dodd-Frank drew its responsibilities use administrative adjudication and it is thus within the CFPB's purview now also to do so. The agency also states that administrative adjudications are conducted under the APA and reviewed by a U.S. Court of Appeals. The final standards do not appear significantly altered from the proposal, which at the time sparked considerable protest on grounds that defendants would be put at greater risk than likely under court proceedings because of the influence the CFPB director and staff have over adjudication outcomes. Republicans will add this rule to the many they believe give the CFPB undue, unaccountable power, but reversal is unlikely absent that of this rule along with numerous others in pending litigation against much of what the CFPB has done under Rohit Chopra.

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](#).

- [CUSTODY5](#): Making full use of powers granted in the 2010 Dodd-Frank Act, the SEC is proposing a wholesale rewrite of the rules dictating how investment advisers must place assets in custody and which institutions are considered qualified for this purpose.
- [GSE-022123](#): As we noted, FHFA is venturing onto treacherous political ground with a [request for input](#) on expanding Fannie and Freddie's ESG imprint.
- [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.