



# *FedFin Daily Briefing*

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Monday, February 27, 2023

## **FRB-NY: CRA Now Makes No Measurable Difference**

As the banking agencies wrestle with their still-unfinished CRA rule ([see FSM Report CRA32](#)), the Federal Reserve Bank of New York [today](#) released a staff report concluding that the law has little to no impact on like-kind household credit in target areas. Using data available only to the Fed, the report finds that banks largely meet CRA in target areas by acquiring existing mortgage loans, not making new ones. That said, CRA may still have had a beneficial impact in small-business lending, but the data do not permit any conclusions. The staff report also notes that CRA could make a meaningful, demonstrable difference if it is reformed, going on only to note that one problem with CRA is the substitution of banks by nonbanks in target areas. This will strengthen longstanding calls for statutory reform to extend CRA to nonbank mortgage lenders, but we are uncertain if the data analyzed via the report's methodology suffices to demonstrate substitution rather than CRA's impact on creation of a secondary market for mortgages perhaps originated by nonbanks that might not otherwise make them. The report does not go on to discuss one frequently cited problem somewhat addressed in the pending NPR: regardless of where banks get CRA-targeted mortgages, loans are generally swiftly sold into the secondary market, obviating any risk and, if the loans are only sold to higher-income borrowers in the target, then also community-development benefit.

## **SCOTUS Re CFPB Has Broad Ramifications**

In a case with significant implications not only for the CFPB, but also other financial agencies, the Supreme Court [today](#) agreed to review the Fifth Circuit's decision invalidating CFPB funding via transfers from the Federal Reserve's income rather than annual Congressional appropriation. The Court of Appeals found that this violates the constitutional separation-of-powers clause, a principle that could be extended to cover independent-agency funding by assessments, not appropriations, as is now the case for the OCC, or via other revenues, as is the case for the FRB and FDIC. Statements from Congress today focused solely on the funding question, with Democrats such as Sen. [Brown](#) (OH) thanking the Supreme Court for granting the Bureau's request for a hearing and Republicans – e.g., Rep. [McHenry](#) (NC) and Sen. Scott (SC) arguing that the decision to hear the case validates longstanding GOP objections to the Bureau's funding independence and, in their view, thus its unaccountability. Key to the Court's decision will be how much deference to give funding mechanisms such as the CFPB's established by Congress precisely to take funding outside the reach of appropriations that Congress feared could undermine agency objectivity. As in the 2020 decision ruling that the CFPB director is subject to the President's will, the Court will also consider whether any decision to reject agency funding invalidates all its rulemaking. Given the scope of the decision for so many agencies, this seems unlikely, but it is nonetheless possible. The case will be heard in the next term and thus not decided until late this year at the earliest.

## **CFPB Puts A Repeat Offender Out Of Business**

Wielding the hammer Director Chopra claimed when he announced his campaign against [repeat offenders](#), the CFPB today [used](#) the powers it argues derive from its authorizing law ([see FSM Report CONSUMER14](#)) to put a nonbank mortgage lender out of business. In this case, RMK Financial was found to have persistently violated a 2015 agreement under consumer-finance laws and rules to mislead veterans about the terms of their VA and FHA mortgages. The new administrative action notes that the firm's CEO decided to persist in actions sanctioned in the consent order despite complaints by internal and external compliance staff, providing a very detailed set of particulars on actions deemed to violate UDAAP and numerous other requirements of law and rule. The new order does not make it clear if the firm agreed to go out of business under this new enforcement action and pay a \$1 million penalty rather than face charges the Bureau might otherwise have contemplated. Regardless, it is a striking view of the Bureau's authority not only to take punitive enforcement action, but also to stipulate the end of a firm's ability to do business under what it believes to be its authority to sanction repeat offenders.

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### Recent Files Available for Downloading

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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](http://www.fedfin.com) or clients may obtain the reports/analyses by e-mailing [info@fedfin.com](mailto:info@fedfin.com) giving the requested item name, firm, and e-mail address. To learn more about *GSE Activity Reports*, click [here](#).

- [GSE-022723](#): FHFA has proposed a set of refinements to the current GSE [capital construct](#).
- [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.