



# *FedFin Daily Briefing*

---

Tuesday, February 28, 2023

## **CFPB Treads Gingerly on Mortgage-Disclosure Exceptions**

In a notice emphasizing the CFPB's distaste for allowing regulatory exceptions, the Bureau asks for comment on an application for one to which it seems a bit more sympathetic. Specifically, comments are requested on an ICBA application for loans that finance both construction and then permanent home ownership, thus increasing the availability and affordability of "starter homes." Even if the ICBA's template is approved, lenders would then need to apply to enroll in a pilot program making use of it, with the Bureau making clear that it will review these applications (which could apparently come from any lender, not just ICBA members) with a skeptical eye. Comments are due by March 29.

## **FDIC Sees Sunny Side of Bank Earnings Data**

In its review of banking-industry fourth-quarter [results](#), the FDIC today notes a sharp increase in the gap between bank loan yield and deposit interest costs. This gap has been sharply criticized by CFPB Director Chopra ([see FSM Report DEPOSITINSURANCE116](#)) and Sen. Jack Reed (D-RI) ([see Client Report REFORM213](#)). However, the FDIC is at pains to say that the gap should grow narrower and then stabilize as market rates stabilize and decline. Doubtless giving the FDIC cause to reiterate support for a recent hike in DIF premiums ([see FSM Report DEPOSITINSURANCE114](#)), data show increases in bank deposits along with a small increase in the DIF ratio. The number of problems banks shrank to the lowest level seen since the FDIC began collecting data, but Chairman Gruenberg [cautions](#) that the industry still faces headwinds due to inflation, rising rates, and geopolitical risk. The amount of unrealized losses declined somewhat, but remains elevated at \$340.9 billion for HTM securities and \$279.5 for AFS holdings.

## **Basel Forecasts End-Game Capital Shortfalls**

The Basel Committee today [issued](#) its latest monitoring report, finding that large global banks saw capital decreases to pre-pandemic levels even as liquidity ratios continued to improve. The release also assesses the impact of Basel end-game credit, operational, and market-risk rules, noting that capital ratios would need to rise by 2.8% to meet them, a bit over the gap at the end of 2021. As noted, the U.S. has yet even to propose these rules, although the agencies are expected to do so by the end of March. The monitoring exercise also provides analysts with new tools to assess bank crypto and securitization exposures, also tracking the impact of capital distributions on relevant ratios.

## **Bipartisan China Bills Fly Through HFSC Markup**

As [anticipated](#), HFSC today reported five bills to censure China and protect Taiwan, along with bills addressing drug-trafficking financing, biomedical security and bank service company examinations. In his opening statement, Chairman McHenry (R-NC) reiterated

that China is a competitor and not a partner, praising the bipartisan effort to mitigate its financial risks. He also urged support for his controversial data privacy bill, which has yet to be voted on. Ranking Member Waters (D-CA) also lauded the bipartisan effort in her opening statement, but attacked Mr. McHenry's privacy bill, arguing that it needlessly undermines strong state standards.

In virtually unanimous action so far today, H.R. 554, a bill requiring Treasury to identify financial institutions providing services to the Chinese leadership following an incursion on Taiwan, passed 40-0. While introducing it, Rep. Sherman (D-CA) announced that he will also introduce legislation mandating all US companies to disclose their risks should Chinese relations deteriorate. H.R. 1156, which requires Treasury to publish a report on Chinese financial risks, also passed 40-0. H.R. 540, which supports Taiwanese accession to the IMF, passed 38-0. H.R. 510, which opposes increasing the weight of the RMB regarding special drawing rights unless China undergoes economic reforms, passed 39-0, with Rep. Beatty (D-OH) highlighting that, while she supports the spirit of the bill, Treasury's lack of visibility into Chinese finances makes enforcement impossible. H.R. 839, which requires U.S. IMF officials to push for greater disclosures of Chinese exchange rate interventions, passed 39-0. H.R. 1109, which requires coordination between state and federal regulators in bank servicer examinations, passed 39-0. We will continue to update clients as the committee marks up H.R. 1165, Mr. McHenry's data privacy bill, and H.R. 1137, the last of the China-related bills that requires Treasury to develop a strategy to counter Chinese trade practices.

## Democrats Stand Firm versus Privacy Preemption

Following an orderly and bipartisan start to today's HFSC markup, Democrats and Republicans today came to verbal blows over the Chairman's data privacy bill. Chairman McHenry (R-NC) argued that the bill protects data privacy while ensuring nationwide regulatory certainty without expanding government bureaucracy. Ranking Member Waters (D-CA) applauded the Chairman for striking clauses prior to the markup that would have stripped the CFPB of rulemaking authority and repealed section 1033 of DFA but continued her strong opposition to federal preemption. Ms. Waters also argued in favor of an opt-in regime and questioned why the Chairman had not called a full committee hearing on data privacy prior to the markup.

Democrats submitted six amendments, slowing the markup and likely delaying a final vote until tomorrow. Among these is an amendment from Rep. Waters striking federal preemption. Rep. Foster (D-IL) [reiterated](#) his compromise to allow likeminded states to form collective data privacy standards, lowering the number of regulatory regimes. However, GOP opposition led to its vote being postponed. Rep. Lynch (D-MA) proposed an amendment to separate biometric data use authorization from financial data use authorizations, which Mr. McHenry and Rep. Barr (R-KN) opposed on grounds that the bill already covers identifiable information and that the amendment is not future-proofed, leading to another postponement. Democratic amendments requiring an opt-in

authorization for sharing information with companies with strong links to foreign governments from Rep. Beatty (D-OH), for acquiring personal data from social media from Rep. Horsford (D-NV), and for sharing health-care related information from Rep. Garcia (D-TX) all met similar fates. We will update clients on resulting votes on both the amendments and the bill.

---

### 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](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](#).

- **[SANCTION20](#)**: In a remarkably bipartisan session, the Senate Banking Committee today made it clear that Congress wants tougher sanctions against Russia, near-term action against hold-out nations to oil-price caps and other efforts, and perhaps even confiscation of Russian assets to fund U.S. Ukraine aid.
- **[CRYPTO40](#)**: In the wake of revelations by Silvergate and other banks about significant deposit exposures to cryptoasset entities, federal banking agencies have issued a statement about the need to manage liquidity risk associated with cryptoassets.
- **[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.