



Wednesday, March 8, 2023

HFSC Plans Broad Attack, Limited Legislation to Rewrite Administration Crypto Standards

The HFSC staff [memo](#) makes it clear that the Digital Asset Subcommittee hearing on Thursday will be a strong general GOP attack on Biden Administration crypto policy and specific campaign against the SEC's enforcement-focused strategy. The memo concludes that a spate of recent actions, including those by the banking agencies, may push digital-asset activities offshore and thus harm competitiveness without reducing risk. The memo also states that Congress must enact crypto legislation, a conclusion shared by the Administration and regulatory agencies in general but not likely with regard to some of the specific statutory changes also outlined in this memo. These include draft bills that would block any federal rules making it impossible for persons to be crypto self-custodians and exempt blockchain and other providers without customer-asset possession from various reporting and licensing requirements. McHenry (R-NC) legislation is also being considered that would repeal certain tax-reporting requirements.

HFSC Plans to Blast CFPB, Press Limited Change

Thursday's HFSC Monetary Policy Subcommittee hearing on the CFPB is sure to be a raucous, partisan affair judging by the [staff memo](#) describing it. Republicans have strongly objected to the Bureau before its inception, with concerns sharply heightened by a series of recent actions under Director Chopra. As a result, the session will look at the Bureau's constitutionality, leadership, funding, and administrative actions, with former House Member and current Minnesota AG Keith Ellison doing his best to counter them. Legislation noted as under consideration in the memo interestingly includes some sweeping CFPB reforms (e.g., converting it into a commission, subjecting it to the appropriations process), but it also notes two relatively modest bills that might gain moderate support requiring cost-benefit and economic analyses via a new office at the Bureau as well as requiring the Fed to disclose how much money is transferred to the Bureau when the Fed is, as now, running at a loss. A bill was also introduced yesterday to remove the CFPB director from the FDIC board. FedFin will provide clients with an analysis focusing on likely next steps.

CFPB Slams Fees, Promises Mercy

Ahead of a [meeting](#) later today between senior White House officials, Director Chopra, and hundreds of state legislators concerning the [President's](#) "junk fee" agenda, the CFPB today [released](#) Supervisory Highlights focusing on recent instances of what it deems unlawful junk fees in deposit accounts, auto loan servicing, mortgage servicing, payday lending, and student loan servicing. The Supervisory Highlights report surprise overdraft fees and multiple NSF fees by some financial institutions it leaves unnamed, making clear that they were unlawful because account holders could not reasonably avoid

them regardless of disclosures. The Bureau notes that the majority of financial institutions flagged for NSF fees have decided to forego them altogether, but also states that it anticipates further follow-up on multiple-NSF and overdraft fees. The Bureau also notes that several companies flagged for unlawful NSF fees remediated consumers, making clear that institutions engaging in “responsible conduct” and “appropriate restitution” are more likely to avoid public enforcement. Bureau examiners also found excessive late fee amounts, fees for unnecessary property inspections, fake private mortgage insurance chargers, and HUD-prohibited late fees for homeowners in loss mitigation programs. The Highlights note that in response to the findings, some servicers waived or refunded charges and refunded excess PMI payments.

GAO Doubts Fintech’s Inclusion Advantage

The GAO today [released](#) a report finding that fintech may enhance inclusion, but that this inclusion comes at risk due to the patchwork of rules governing firms offering products – e.g., wage advances – that may put vulnerable households at risk. Digital-deposit products are also noted as high-risk, with the GAO also finding that fintechs cannot be counted on to ensure inclusion because some consumers lack Internet access and/or prefer working with humans. GAO believes the banking agencies should expand and standardize examinations and regulations affecting bank/fintech partnerships, also pressing the CFPB to clarify the extent to which TILA covers earned-wage asset products; the Bureau agreed to do so. We note that this product is the focus of a new information-sharing agreement between the [CFPB and NLRB](#), perhaps the forum by which new standards will be forthcoming.

HFSC Republicans Scrutinize SEC Rulemaking, Fed Climate Policy

As [anticipated](#), today’s HFSC Subcommittee Hearing with the inspectors-general for the FRB, CFPB, Treasury, and SEC focused on GOP attacks on the SEC’s IG vacancy and the CFPB’s funding mechanism. In addition to expressing discontent with the Bureau’s “regulation by enforcement,” Subcommittee Chair Huizenga (R-MI) blamed Chairman Gensler for short tenures at the SEC’s IG and expressed concern over what he called the agency’s poor responsiveness to FOIA requests. He also quizzed the Fed’s IG about the status of a review of the Board’s approach to climate change, an effort the IG said involves benchmarking to other central banks to identify best practices. When questioned about a potential review of the CFPB’s funding mechanism in light of a pending Supreme Court decision, the Bureau’s IG (who is the same as the Fed’s) said that his office has not initiated any such inquiry. Other Republicans were concerned with the SEC’s rulemaking process and what they described as unduly short comment periods. Democrats were almost exclusively focused on criticizing what they called Republican partisanship and defending Biden Administration pandemic relief policies such as ERA and PPP.

Brown, Others Demand ABA Check-Washing Action Plan

Senate Banking Chairman Brown (D-OH) and Sens. Warren (D-MA) and Cortez Masto (D-NV) today sent a [letter](#) to the ABA focusing on the growth of “check-washing” fraud now spiking through mail theft and other means. The letter argues that banks fail to identify fraudulent-submitted checks or compensate victims, including small banks which the letter alleges are disproportionately harmed by large-bank unaccountability. The ABA is asked to come up with a plan quickly to help its members, requesting a briefing on how this will be done by March 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](#).

- [FEDERALRESERVE73](#): At today's HFSC hearing, Chairman Powell modulated his hawkish stance just a bit, continuing as he long has done to refuse to take a stand on fiscal policy while advocating for rapid debt-limit action.
- [FEDERALRESERVE72](#): Although Chairman Powell's testimony kept exclusively to monetary policy, today's Senate Banking hearing seemed only to go through the motions set at previous hearings with regard to inflation, growth, and the Fed's long-term objectives.
- [GSE-030123](#): A recent FRB-Atlanta [study](#) finds that closing the racial homeownership gap alone would not redress housing market racial disparities because minority homeowners cannot equitably access home equity and thus enjoy comparable access to the economic opportunities afforded by homeownership.
- [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.