



FedFin Daily Briefing

Friday, March 17, 2023

Biden Positions White House On Side Of SVB/SBNY Enforcement Actions

Reflecting growing political heat as SVB/SBNY revelations continue, President Biden today [called](#) on Congress to toughen enforcement penalties for senior management at failed banks. As noted on the [fact sheet](#) accompanying the formal request to Congress, the White House believes current law makes it unduly difficult for regulators to claw back executive compensation following a receivership and/or to bar individuals from further banking-industry employment. The Administration specifically seeks new law authorizing the FDIC to seek post-receivership compensation in the form of prior stock sales and increase the scope and amount of FDIC civil-money penalty power. We would expect bipartisan legislation along these lines to advance even though drafting measures of this kind always proves more challenging than calls demanding it. We would also expect this bill to become a vehicle for additional statutory changes in the wake of hard lessons recently learned, but we remain convinced that Warren or other progressive bills to sanction the Fed, rewrite tailoring or mandate new capital, liquidity, or governance rules will not advance, although change is sure to come from new rules as detailed in a client report you will shortly receive.

HUD Reinstates Tough Disparate-Impact Standard

HUD today announced a [final rule](#) rescinding a 2020 rule governing Fair Housing Act disparate impact claims ([see FSM Report FAIRLEND8](#)) and restoring a 2013 discriminatory effects rule ([see FSM Report FAIRLEND4](#)). The fact sheet accompanying the announcement claimed that the complications added in 2020 rule would have made it “virtually impossible” for HUD and private plaintiffs to prove discrimination. HUD argues that the 2013 rule has a more straightforward approach as a claim only needs to prove that a policy had a discriminatory effect, given it was not necessary to achieve a substantial, legitimate, nondiscriminatory interest or if there was a less discriminatory alternative. Importantly, the reinstatement of the 2013 rule also eliminates protection for algorithmic underwriting afforded to mortgage lenders in the 2020 rule. The rule goes into effect thirty days after publication in the *Federal Register*.

Waters Pledges Bill on Failed-Bank Execs, Pushes Incentive-Comp Regs

Shortly after the President called on Congress to toughen penalties for failed bank executives, HFSC Ranking Member Waters (D-CA) sent a [letter](#) today to Fed, FDIC, and SEC leadership announcing she is crafting legislation to do so. The letter also reiterated Democratic calls for the agencies to hold SVB and SBNY executives accountable and urged them to finalize longstanding compensation rules ([see FSM Report COMPENSATION30](#)), which Ms. Waters demanded include strong clawback

provisions. Senate Banking Chairman Brown (D-OH) also released a [statement](#) today pledging that his committee will look into holding both the failed bank executives and the regulators overseeing them accountable and reforming laws to protect consumers and small businesses, but made no specific commitment in wake of the President's request. HFSC Chairman McHenry has yet to be officially heard from.

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](#).

- [REFORM216](#): In this report, we continue our policy postmortem of SVB/SBNY and, now, so much more.
- [DEPOSITINSURANCE118](#): As promised in our first post-SVB impact assessment ([see Client Report RESOLVE49](#)), this report begins a series of analyses of specific policy issues.
- [RESOLVE49](#): As we [noted last night](#), the President concurred with Treasury, the Fed, and FDIC in [deciding](#) that SVB's Friday failure and [imminent runs on Signature Bank](#) and, most likely, others posed a systemic risk.
- [GSE-030923](#): As detailed in our reports earlier this week on Powell's appearance before [Senate Banking](#) and [HFSC](#), much was said about the pending rewrite of big-bank capital standards.
- [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.