FedFin Daily Briefing

**Wednesday, May 10, 2023**

## McHenry Seeks To Use Appropriations Denial As Legislative Weapon

In his letter to Appropriations Committee leadership late yesterday afternoon, HFSC Chairman McHenry (R-NC) not only highlights GOP budgetary issues, but also requests that the panel deny funding for further SEC action on new rules governing open-end funds, equity-market execution, and climate-risk disclosures. Based on his opposition to SEC digital-asset enforcement actions, Mr. McHenry also opposes any appropriation that increases the Commission's enforcement activities along with funds for actions related to an accounting bulletin limiting bank-custody activities in this sector or changing the qualified-custodian rule (see FSM Report CUSTODY5). Based on his anti-China objectives, the chairman also wants to block appropriations for U.S. capital increases for international financial institutions and any outbound-investment restrictions. Funding should, he said, also be blocked for FinCEN's efforts to implement new beneficial-ownership rules or to allow the Postal Service to offer banking services, with Mr. McHenry also reiterating demands to bring the CFPB under the appropriations process.

## CFPB Declares Unilaterally Reopened Deposit Accounts To Be UDAAP

Continuing its and the Administration's campaign against "junk fees," the CFPB today issued a circular establishing that its UDAP authority may apply to banks that unilaterally reopen a deposit account to process debits or deposits after a consumer has closed it. It does so via the CFPA's criteria that practices are unfair when they cause consumers substantial injury, but the Bureau's analysis reiterates its earlier, broad reading of UDAAP (see FSM Report UDAP8) that substantial injury also includes significant risk of concrete harm as well as a small amount of harm imposed on a significant number of consumers. Penalty fees, third party account access, and furnishing of negative information to consumer reporting companies are cited as specific examples of how consumers may be harmed by the practice, with the Bureau arguing that none is reasonably avoidable. In comments on the circular, Director Chopra called unilaterally reopened bank accounts "fake accounts," and emphasized the Bureau's commitment to eradicating "junk fees." We will shortly provide clients with an in-depth analysis of a circular which, despite the nature of the release, will be enforced by the Bureau as if it were a new rule.

## FHFA Concedes on DTIs, May Even Address LLPA Controversy

FHFA today retreated far more completely on its controversial March decision to retain an upfront fee related to a borrower's debt-to-income level, now saying that it will postpone this requirement indefinitely pending views to be solicited via a forthcoming RFI. While the immediate focus of today's action is the DTI fee, the announcement suggests that the RFI may seek views on the overall upfront fee construct, thus also addressing continuing LLPA controversies. Criticism of these fees has come principally from Republicans, with today's action winning praise from HFSC Chairman McHenry (R-NC) and Housing Subcommittee Chair Davidson (R-OH) calling the DTI fee unworkable and demanding that broader LLPA revisions also be rescinded.

## Barr Lambasts Regulators as Democrats Press Targeted Change

At the HFSC Financial Institutions Subcommittee hearing today, Chairman Barr (R-KY) was scathing in his denunciation of reports from the Fed (see *Client Report* **REFORM221**) and FDIC (see *Client Report* **REFORM222**) on the failures and of what he called a "term paper" from the FDIC outlining deposit-insurance options (see *Client Report* **DEPOSITINSURANCE119**). These were characterized as self-serving analyses and/or efforts to obstruct Congressional inquiry, with Mr. Barr also taking strong issue with Vice Chairman Barr's regulatory recommendations. Ranking Member Foster (D-IL) and full committee Ranking Member Waters (D-CA) were courteous towards the agency reports but focused on issues such as ways to prevent viral runs via new backstop liquidity facilities and the extent to which new stress-testing and capital changes are warranted. Rep. Luetkemeyer (R-MO) also focused on viral runs, stating that these present a national-security threat because China could initiate bank failures via social media. Rep. Rose (R-TN) took issue with the recent rejection of the TD-First Horizon merger, referencing letters from Sen. Warren (D-MA) to Acting Comptroller Hsu and suggesting that the OCC is being influenced by Democrats. Rep. Loudermilk (R-GA) asked witnesses if the "adversarial" relationship between banks and their regulators has become a risk; Mr. Gould of Jones Jay concurred. The law-firm witnesses also agreed with Rep. Barr that undue standards could lead to fewer mid-sized banks and a resulting "barbell" distribution of what Mr. Barr said would be TBTF giant banks and a few small institutions. There was no discussion of the transparency bills noted in conjunction with this hearing, but Mr. Barr's comments strongly suggest he plans quickly to advance them.

## 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.

- **CRYPTO43**: Today's joint HFSC-House Ag hearing on assessing crypto's regulatory gaps saw bipartisan calls for Congressional action, but none on what that should be done.
- **GSE-050923**: As our in-depth report earlier today details, the Fed's latest financial-stability report pulls a lot of punches because, as always, it's afraid to frighten the children with frank discussion of what might actually threaten financial stability in the near term.
- **SYSTEMIC96**: Perhaps because its last financial-stability report (see *Client Report* **SYSTEMIC94**) was contradicted just five months later by a systemic-risk designation, the Federal Reserve's latest report eschews a conclusion about prospective risk in favor of a review of current concerns.
- **SIFI35**: In concert with proposing a new systemic-risk methodology, the Financial Stability Oversight Council sought comment on guidance that significantly rewrites the manner in which nonbanks are designated as systemically important financial institutions (SIFIs).
- **DEPOSITINSURANCE119**: In this report, we follow our initial assessment of the FDIC's deposit-insurance reform report with an in-depth analysis of its recommendations and their prospects.
- **REFORM223**: Following our analyses of the Fed's report on SVB (see Client Report REFORM221) and the FDIC's on SBNY (see Client Report REFORM222), we turn now to one from the General Accountability Office sure to have at least as much impact on bipartisan consideration of what needs next to be done to govern regional banks.
- **REFORM222**: In this report, we build on our assessment earlier today of the Fed's SVB autopsy (see Client Report REFORM221) with an assessment of the FDIC's self-review of Signature's failure.
- **REFORM221**: In this and subsequent reports, we build on our initial reactions to SVB/SBNY reports from the Fed, FDIC, and GAO, focusing in more depth on the agencies' plans for near-term action

with strategic consequence and key points in the GAO's report that will strongly influence Hill reactions on both sides of the aisle.

- **GSE-042723:** FSOC's newly-proposed analytical methodology for systemic risk identification is most immediately important for nonbank mortgage companies and the regulated institutions that love them.

- **SYSTEMIC95:** Rejecting the Trump Administration's hands-off approach to designating systemically-important nonbank financial institutions or activities and practices, the Biden Administration's FSOC has bifurcated this construct with one proposal on designating entities and another that lays out an analytical approach to identifying systemic risk that would then guide firm and activity designation as well as Council staff coordination with primary federal regulators leading to new rules, product or service prohibitions/restrictions, or firm-specific supervisory action.

- **GSE-042023:** FHFA yesterday proposed a sweeping rule that would codify Sandra Thompson's equitable- and fair-housing standards in a rule that any future FHFA director would have to work a lot harder to reverse.

- **CRYPTO42:** As we anticipated, the HFSC Digital Asset Subcommittee hearing today on federal stablecoin legislation did not entertain bipartisan expressions of support for the draft noticed with the hearing announcement.

- **CRYPTO41:** As anticipated, HFSC's hearing today with Chairman Gensler was a raucous affair which, while divided sharply on party lines when it comes to Mr. Gensler, also laid out general agreement on matters such as the need for stablecoin legislation (the topic of a high-profile hearing tomorrow).

- **GSE-041323:** As we noted earlier today, global regulators are rethinking their 2015 decision not to require an express capital charge for interest-rate risk, a shift with significant implications for the role of U.S. banks as mortgage lenders and investors.

- **IRR8:** As we noted yesterday, the head of the Basel Committee has targeted two capital and liquidity compromises included in the current Basel III construct not addressed in the end-game rules to which the U.S. plans shortly to turn.

- **COMPENSATION35:** Executive compensation incentives have proved among the most important reform priorities in the wake of recent bank failures.

- **REFORM220:** In this report, we drill down on prior forecasts (see *Client Report* **REFORM219**) of near-term regulatory action to identify the revisions sure to be prioritized as NEC Director Brainard and FDIC Chairman Gruenberg seek to reverse rules finalized over their objections when they were in the minority.