



FedFin Weekly Alert

Monday, July 24, 2023

☐ HERE IT COMES...

As anticipated, the banking agencies will get their capital proposals out before the August recess but close enough to it to avoid – or so they hope – a withering gauntlet of House hearings. By the time Congress reconvenes in September, the agencies expect – and with good reason – that the new rules will escape notice because attention will have turned to the most vexing issues confronting this divided Congress, most notably keeping the federal government open at the end of the fiscal year. Acting now also ensures that, even if the agencies give ground and concede to the industry’s 120-day comment deadline, at least one month of that will fly by in August, putting the timeline for issuing a final capital rule into the first quarter of 2024 and thus beyond the reach of Congressional Review Act repeal should Republicans muster enough support and the President somehow recants.

We will provide clients with detailed reports as soon as the FDIC and FRB conclude their Thursday meetings and then tackle each of the new proposals with extensive analyses of key provisions and their strategic implications for banks, the financial market, and the macroeconomy. At this point, we expect a 3-2 vote in favor of the capital package at the FDIC and a strong dissent from Gov. Bowman when the rules come before the Board. Gov. Waller is likely also to object, but he may hold his vote in order to allow the comment process to proceed and Mr. Barr to concede in the final versions before he takes a firm stand.

We also expect a volley of Congressional statements for and against the proposals as soon as they’re released and perhaps even a bit beforehand. Again, we’ll monitor the political landscape and keep you posted on all actions with meaningful impact on the prospect for new U.S. capital regulation.

Headlines From the Past Week’s Daily Briefings

July 17

- **HFSC to Tackle FinCen, Sanctions** - The HFSC [memo](#) on the National Security Subcommittee’s hearing makes it clear that Republicans have not wavered in their criticism of FinCEN’s beneficial-ownership standards ([see FSM Report AML134](#)).

- **Global Regulators Strengthen Crypto, Stablecoin Standards** - The FSB [finalized](#) its “same-activity/same-rule” standards for cryptoassets and stablecoins ([see FSM Report CRYPTO34](#)).
- **Gensler Sounds AI Systemic Alarm** - In [remarks](#), SEC Chairman Gensler echoed his longstanding concern about [predictive analytics](#) and AI-related problems recently [highlighted](#) by CFPB Director Chopra and the banking [agencies](#).

[July 18](#)

- **Barr Puts AI On Fair-Lending Watch** - Reflecting the Administration’s new [focus](#) on AI and SEC Chairman Gensler’s [concerns](#), Vice Chair Barr [made it clear](#) that the FRB is also mindful of emerging AI risks.
- **IMF Opposes Crypto Sovereign Currency, Emphasizes AML/Systemic Risk** - The IMF [published](#) cryptoasset recommendations previously submitted to the GHOS.
- **HFSC GOP Advances Beneficial Ownership Legislative Rewrite** - The HFSC National Security Subcommittee hearing on FinCEN’s beneficial ownership rulemaking revisited recent bipartisan [concerns](#).

[July 19](#)

- **FTC/DOJ Propose Sweeping M&A Rewrite** - Following an extensive inquiry into a new U.S. [merger construct](#), the Department of Justice and Federal Trade Commission [released](#) a draft formal policy statement that would codify issues previously raised in areas such as a transaction’s implications for workers.
- **White House Leaves Bank “Junk Fee” Attack As Is** - Acting on President Biden’s competition executive order ([see Client Report MERGER6](#)), the White House announced a slate of [actions](#) aimed at lowering consumer costs and promoting competition.
- **Bipartisan Senators Introduce New DeFi-AML/Sanctions Framework** - Senator Reed (D-RI) [introduced](#) legislation along with Sens. Warner (D-VA), Rounds (R-SD), and Romney (R-UT) targeting DeFi-related money laundering and sanctions evasion.
- **Dems Reintroduce Bill Requiring Instant Consumer Deposit Access** - Sens. Van Hollen (D-MD) and Warren (D-MA) and Reps. Pressley (D-MA) and Lynch (D-MA) have [reintroduced](#) the Payments Modernization Act, which requires financial institutions to recognize deposited funds in real-time and clarifies the moot point of whether the Fed has existing authority to build a real-time payments system.

July 20

- No news of note.

[July 21](#)

- **GOP's Crypto Bills Still Face Significant Partisan Problems** - HFSC is now set for a mark-up of two controversial crypto bills, one with [shared jurisdiction](#) with the [Agriculture Committee](#) governing regulatory jurisdiction and [the other](#) setting federal standards for payment stablecoins.
- **Senior GOP Senator Proposes Sweeping FRB Reform** - Going beyond bipartisan [legislation](#) with Sen. Warren (D-MA) to redesign Fed governance to increase political accountability, Sen. Scott (R-FL) on his own has introduced a legislative [package](#) that would sharply contract the Fed's monetary-policy and emergency-liquidity authority.
- **Clawback Bill Faces Tuberville Blockade** - Reinforcing his stand against the executive-compensation clawback bill reported 21-2 by Senate Banking ([see FSM Report COMPENSATION37](#)), Sen. Tommy Tuberville (R-AL) posted an [op-ed](#) laying out his reasoning.

This Week

Wednesday, July 26

Senate Banking Subcommittee on Financial Institutions and Consumer Protection Hearing entitled: "Taking Account of Fees and Tactics Impacting Americans' Wallets." [9:30 am, Dirksen Senate Office Building 538]. Witnesses: **Ms. Michelle A. Henry**, Attorney General, Commonwealth of Pennsylvania; **Ms. Lindsey Siegel**, Director of Housing Advocacy, Atlanta Legal Aid Society; and **Mr. Brian Johnson**, Manager Director, Patomak Global Partners.

SEC Open Meeting. [10:00 am, webcast]. Matters to be discussed: whether to adopt rules to enhance and standardize disclosures regarding cybersecurity risk management, strategy, and governance; propose new and amended rules relating to conflicts of interest associated with broker-dealers' and investment advisers' use of predictive data analytics in connection with certain investor interactions; and propose amendments to the exemption for internet advisers from the prohibition against registration under the Investment Advisers Act of 1940.

HFSC Committee Markup. Matters to be discussed: Stablecoin and crypto market structure bills, flood insurance legislation, a resolution that would nullify the CFPB's small-business data collection rule, and ESG-related bills.

Thursday, July 27

FDIC Open Board Meeting. [10:00 am, webcast]. Matters to be discussed: Memorandum and resolution re: Regulatory Capital Rule: Amendments Applicable to Banking Organizations Subject to Category I, II, III or IV Standards, and to Banking Organizations with Significant Trading Activity.

Federal Reserve Open Board Meeting. [1:00 pm, Martin Federal Reserve Board Building]. Matters to be discussed: Proposed rules to implement the Basel III endgame agreement for large banks and adjustments to the surcharge for U.S. global systemically important banks.

HFSC Committee Markup. Matters to be discussed: National security bills.

Friday, July 28

FSOC Open Meeting [11:10 am, webcast]. Matters to be discussed: The executive session includes an update on the work of the Council's Nonbank Mortgage Servicing Task Force; an update on the Council's Climate-related Financial Risk Committee; and an update on developments in the banking sector. The public session includes an update on the Council's Climate-related Financial Risk Committee and an update on the transition from LIBOR.

Future Events of Note

No meetings of note.

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](#).

- [DEPOSITINSURANCE121](#): In the wake of today's Senate Banking deposit-insurance reform hearing, it seems certain that there will be no legislation in the near term and most likely in this Congress to increase FDIC-insurance thresholds.
- [CLIMATE16](#): As [anticipated](#), Republicans continued their [campaign](#) against ESG at today's HFSC Financial Institution Subcommittee hearing on climate risks, reiterating arguments that a regulatory focus on climate risk signals financial institutions to cease lending to carbon intensive industries.
- [MMF20](#): The SEC has significantly revised its proposed MMF-reform standards, eliminating a controversial swing-pricing approach to reduce first-mover advantage in favor of new redemption fees at institutional prime and tax-exempt funds.
- [GSE-071823](#): Reuters is reporting [today](#) and other sources are echoing three regulatory sources saying that the impending capital rewrite will propose risk weighted assessments (RWAs) between 40 and 90%, up from the minimum 20 and 70% [Basel standards](#).
- [GSE-071123](#): As we detailed [yesterday](#), FRB Vice Chair Barr laid out what he called a holistic view of bank capital standards that encompasses [end-game rules](#), stress testing, post-SVB lessons, GSIB restrictions, and resolvability.
- [CAPITAL228](#): FRB Vice Chairman Barr's speech [today](#) outlines near-term U.S. regulatory-capital

policy, confirming our [earlier assessment](#) that a sweeping proposal will soon be released.

- **[GSE-070523](#)**: As an in-depth FedFin analysis today addresses ([see FSM Report REALESTATE25](#)), the banking agencies and NCUA late last week issued far-reaching [guidance](#) encouraging loan accommodations and even forbearance for troubled commercial real estate (CRE) projects, including multifamily obligations.
- **[REALESTATE25](#)**: The banking agencies and NCUA have agreed on a final policy statement providing guidance for how financial institutions are to handle troubled commercial real estate loans, giving banks considerable latitude to forbear when borrowers are unable to meet their obligations but are deemed to be able to pay at least some of it over time.
- **[GSE-063023](#)**: In non-public remarks ahead of a presentation by FedFin managing partner Karen Petrou, Sen. Jack Reed (D-RI) laid out what he thinks banking agencies will do next, doubtless based on what they've told him that they'll do next.
- **[COMPENSATION37](#)**: The Senate Banking Committee has overwhelmingly approved bipartisan legislation to reform executive compensation following larger insured-depository institution (IDI) failures, with parent-company executive compensation also at risk in some circumstances.
- **[ESG4](#)**: Late Friday, GOP HFSC Members issued a withering [report](#) criticizing the Biden Administration for using financial regulators to do its political bidding on ESG objectives that it believes "contort" financial regulators into political instrumentalities that put retail investors at risk.