



## Senate Democrats Stand Firm On "Junk Fee" Campaign

Today's lightly-attended Senate Banking Financial Institutions Subcommittee hearing on banking and consumer fees showcased broad Democratic alignment with the Administration's "junk fees" campaign and persistent Republican aversion to this effort as well as to the CFPB. Although he applauded recent bank actions to significantly reduce overdraft and NSF fees, Chairman Warnock (D-GA) nonetheless promised to pursue legislation that would lower "predatory fees" and also suggested that more federal agencies should have power to address "hidden fees." He and other Democrats also pushed for stronger federal-state collaboration to improve legal enforcement against interstate junk fee offenses. Both Michelle Henry, Pennsylvania's AG, and Lindsey Siegel of the Atlanta Legal Aid Society strongly supported these measures, with Ms. Henry noting that a federal framework would greatly assist state enforcement. Sen. Warren (D-MA) argued that stronger rules and enforcement are necessary despite voluntary overdraft fee reductions by some banks. Although Ranking Member Tillis (R-NC), agreed with the Chairman that hiding fees from consumers is wrong, he sharply criticized the CFPB for what he described as its "scattershot" regulatory approach, engaging in overdraft "name and shame campaigns," skirting APA rulemaking, and even undermining prudential regulation. Brian Johnson, the former CFPB deputy director, argued that the Administration's junk fee campaign is a misplaced attack on inflation and that the CFPB has violated the rulemaking process, abused its power, subverted Congress.

## CFPB Flags UDAAP, Other Problematic Practices for Enforcement

The CFPB's latest supervisory [report](#) not only details recent actions and priorities, but also expressly stipulates that certain activities identified in the course of supervision that have yet to be addressed by formal agency action are UDAAP. Given the Bureau's view of the reach of its powers in the event of UDAAP ([see FSM Report UDAP8](#)), entities engaged in practices akin to those now identified may face near-term legal and reputational risk. Highlighted activities and practices include several auto lending, servicing, and collection practices (generally by dealers, not independent lenders); numerous medical-debt [practices](#), and payday-collection activities. However, the report's details also flag as UDAP – not also abusive – practices at banks such as imposing both NSF and line-of-credit fees on the same transaction. Fair-lending risk was found across many transaction classes with regard to who received pricing exemptions, with discrimination also found in underwriting related to mortgage origination, credit cards, and small-business lending as well as in mortgage servicing.

## SEC Targets AI Advice

Acting as anticipated following Gary Gensler's fiery talk last week about AI [risk](#), the SEC today voted 3-2 to propose new rules curtailing what it believes to be broker dealer and investment-adviser conflicts of interest due to predictive analytics. These would be said to occur when analytics identify investor options based on the firm's or a broker/adviser's interest, not those of the investor. As a result, firms would need to ensure that "robo-advice" and all the other systems now used to solicit clients and recommend investments take firm or adviser compensation into account only after ensuring the investment is suitable, in the investor's best interests, and has a competitive return despite any profit related to internal offerings, fees, or commissions. Marketing practices would also need to be sound from an investor's perspective, not just effective in terms of resulting sales or commissions. In a move akin to those we expect from the CFPB and banking agencies ([see FSM Report AI](#)), firms that use AI or other predictive analytics would need policies and procedures to identify and then either eliminate or "neutralize" them along with establishing new record-

keeping capabilities. In opposition, Commissioner Peirce said that the proposal is unduly prescriptive, not technology neutral as represented, and operationally problematic. Comments are due sixty days after *Federal Register* publication.

## Crypto-Jurisdiction Bill to Advance; Stablecoin Measure Likely to do so Tomorrow

Chairman McHenry (R-NC) and Ranking Member Waters (D-CA) announced at today's HFSC markup that bipartisan negotiations on the committee's [stablecoin bill](#) continue and despite the absence of any breakthrough. [As noted](#), we will cover the stablecoin mark-up tomorrow, which we expect to lead to a reported bill because, as was evident today for the crypto-jurisdiction measure, several Democrats will cross the line even if Ranking Member Waters has not agreed to the mark-up vehicle. So far on the jurisdiction bill (H.R. 4763), Ranking Member Waters and many Democrats (e.g., Lynch D-MA, Scott D-GA, and Sherman D-CA) strongly opposed the bill on grounds that it fails adequately to fund the then to CFTC, weakens investor protection, offers a safe harbor for bad actors if they submit an intent to register, and allows for comingling of customer assets. Despite this opposition, Reps. Himes (D-CT), Nickel (D-NC), and Torres (D-NY) joined Republicans in supporting the bill, claiming that inaction on the dysfunctional status quo is unacceptable. The bill will likely be forwarded to the House floor with bipartisan support, where it will face similar odds in the fall. It stands little chance in the Senate absent major revisions but could nonetheless possibly be placed in a must-pass bill at year-end or in 2024.

## DOJ Officials Seeks Merger Answers

In [remarks](#) today, Policy Director David Lawrence of DOJ's Antitrust Division went beyond new, draft DOJ/FTC merger guidelines ([see FSM Report MERGER12](#)) to lay out questions on which the agencies particularly seek answers. These include whether the guidelines include the best framework for considering rebuttal evidence, if the guidelines and appendices allow for the use of the most powerful economic tools, and how the new efficiency framework would function. Mr. Lawrence was also emphatic that the new guidelines take full account of recent Supreme Court and related judicial action, noting that the DOJ is well aware that courts rely more on precedent than the agencies' guidelines. However, several key cases are in his view based on economic evidence that no longer applies or may even be in error, with transparent guidance the best approach now to ensuring that anti-competitive transactions do not advance or are retroactively addressed.

## Powell Stresses Bank Discount Window Readiness

FRB Chairman Powell's press conference today focused almost entirely on monetary policy, but the chair agreed that the discount window performed badly during the recent crisis and that banks need to ensure ready access. He also indicated that the Fed encourages discount-window use, perhaps here hoping to end the stigma that has long inhibited draws.

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### Recent Files Available for Downloading

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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](#).

- [CAPITAL229: As promised](#), we plan in-depth coverage of the Fed and FDIC meetings tomorrow as well

as of the capital rewrites they are set to propose no matter all the warning shots from [Congressional Republicans](#).

- **MERGER12:** Building on a request for comment, the Department of Justice (DOJ) and Federal Trade Commission (FTC) have now proposed specific revisions to U.S. merger policy that significantly redirect the manner in which M&A transactions – even if only for minority positions – will be considered.
- **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.