



# *FedFin Client Report*

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Tuesday, April 26, 2022

## **Chopra Stands His Ground on Sweeping Agenda, Administrative Process**

Client Report: CONSUMER40

### **Executive Summary**

The Senate Banking Committee's hearing today with CFPB Director Chopra was a sharply partisan session with little immediate impact on what Mr. Chopra plans to do to achieve his sweeping new vision. Although the debate will have little to no impact on bank-merger policy, much of the session focused on the actions Mr. Chopra took in concert with Acting Chairman Gruenberg to wrest FDIC control from former Chair McWilliams and issue an RFI suggesting significant changes to both merger analytics and bank-resolution policy ([see FSM Report MERGER9](#)). Led by Ranking Member Toomey (R-PA), Republicans also took strong exception to both the substance and process related to the Bureau's revised examination manual expanding the scope of UDAAP enforcement actions ([see FSM Report CONSUMER39](#)). They also argued that Mr. Chopra's [campaign](#) against repeat offenders is unnecessary and procedurally suspect, but Chairman Brown (D-OH) strongly defended it as did Sen. Warren (D-MA), who urged the Bureau and banking agencies to break up Wells Fargo. As this report details, Democrats also pressed for action on issues that are to some degree outside the Bureau's jurisdiction – e.g., vendor concentration –as well as on the need to govern bigtech. Mr. Chopra's testimony highlighted the latter issue as a top agency priority, noting also plans to ensure consumer choice in arenas such as loan servicing.

### **Analysis**

#### ***Opening Statements***

Chairman Brown strongly praised Mr. Chopra and attacked panel Republicans for the grounds on which they have criticized him, especially those related to the FDIC process. He also said that consumers are "at the mercy" of increasingly large companies that do their best to take advantage of opportunities to charge them too much or to continue consumer-protection violations. As noted, Sen. Toomey raked Mr. Chopra over many coals, essentially disputing his tenure to date and the direction Mr. Chopra plans for the CFPB.

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## Testimony

In his written statement, Mr. Chopra emphasized his campaign against repeat offenders and anti-competitive large financial institutions, detailing efforts also on rules mandated by the Dodd-Frank Act such as those for small-business reporting ([see FSM Report FAIRLEND7](#)) and consumer data ([see FSM Report DATA](#)). The Bureau is also reviewing the rules inherited from the FRB (likely including those for predatory mortgages) to rewrite these in concert with a broader campaign to simplify rules and establish bright-line thresholds. The Bureau's competition efforts also include finding regulatory ways to broaden consumer choice in areas such as loan servicing and credit reporting. The Bureau is prioritizing actions to limit the role of "tech conglomerates" and "super apps," reiterating the orders sent to tech-platform [firms](#) and emphasizing the importance of ensuring that firms with access to consumer-payment information do not use these data for other purposes.

## Q&A

- **UDAAP:** As noted, Ranking Member Toomey and Sen. Tillis (R-NC) criticized the exam-manual update, claiming that the Bureau had no statutory authority to regulate disparate impact because it does not qualify under its statutory authority. The Republican members also criticized the lack of due process, claiming it broke decades of regulatory precedent. Director Chopra defended the change, saying that it aligns with the precedent of decades of unfairness standards and uses identical language already found in its counterpart FTC manual.
- **Small businesses:** Sen. Kennedy (R-LA) asked about the proposed rule on small business data collection, questioning whether it is appropriate for financial institutions to "guess" the race of a small business owner. Director Chopra stated he could not comment on open rulemaking and that it was proposed before he arrived. Sen. Daines (R-MT) asked how the CFPB can balance its consumer-protection mission with the need to ensure the continued availability of credit for local businesses. Director Chopra said that, while it is critically important for businesses to get loans, the CFPB is mandated by law to implement this rule and required by court order to make progress.
- **Repeat Offenders:** Sen. Warren (D-MA) renewed her criticism of Wells Fargo, using it as an example of how repeat offenders are not properly penalized and arguing that asset caps may not be enough to deter the largest banks. Director Chopra agreed that fines are often insufficient, reiterating his need for structural remedies.
- **Fraud:** Referencing a letter he and Sen. Warren sent, Sen. Menendez (D-NJ) asked for views on payment-system fraud, asking whether the CFPB had seen an uptick in P2P platform scam complaints and whether current rules suffice. Director Chopra said he is aware of "egregious" P2P fraud but hesitated to comment more.
- **Insurance:** Sen. Rounds (R-MT) questioned Director Chopra on the CFPB's statutory role in insurance regulation, stating that the CFPB may be taking too broad of a view of what constitutes financial activity, especially when it comes to small-business reporting

noted above. Director Chopra again noted that the rulemaking was initiated before his tenure, expressing commitment to respecting the CFPB and stating that the CFPB would “look hard” at the issue before finalizing the rule.

- **Outsourcing:** Sen. Warner (D-VA), indicated concern over outsourcing of activities like data storage and cloud computing and asked Director Chopra if he and other regulators had enough visibility into outsourcing functions. Director Chopra said that some resilience issues could stem from vendor concentration, noting that he is working with other regulators.
- **Bigtech:** Sen. Warner also asked Director Chopra when a CFPB review of Bigtech payment systems would take place and whether the Bureau is also reviewing threats from Chinese tech companies such as WeChat. Director Chopra expressed concern that the US consumer finance ecosystem was “lurching toward a Chinese style market structure,” and said that the CFPB would report on studies of Chinese models, although he did not explicitly state a timeline for doing so. He also expressed optimism about FedNow in offering real time payment services for small banks.
- **Rural Finance:** Sens. Warner, Smith (D-MN), and Cortez-Masto (D-NV) asked what the CFPB is doing to address rural banking deserts; Director Chopra said that the CFPB has launched an initiative to investigate solutions.