



FedFin Client Report

Wednesday, November 29, 2023

CFPB Catches a Break

Client Report: CONSUMER53

Executive Summary

In sharp contrast to most recent HFSC hearings with CFPB Director Chopra, today's session was relatively calm. Republicans did reiterate their strong aversion to the agency's structure, funding, and recent initiatives, but Chair McHenry (R-NC) supported much in the Bureau's open-banking proposal ([see FSM Report DATA4](#)) and GOP objections to other actions seemed more out of habit than with any intent to press for change. The exception is the agency's small-business reporting [rule](#), where action is planned this week for a vote – likely successful – to reverse the agency's approach. However, President Biden has indicated he will [veto](#) it. Refuting recent press reports, Mr. Chopra indicated no new plans to ban overdraft fees.

Analysis

Opening Statements

Chairman McHenry called the CFPB a “hyper-partisan” agency, pointing in particular to its small business data collection [rulemaking](#) and pending efforts to reverse it. However, he praised its data privacy proposal ([see FSM Report DATA4](#)), noting common ground on the core issue of consumer control over sensitive financial information. Financial Institutions Subcommittee Chairman Barr (R-KY) called the CFPB the most “unaccountable agency in the federal government,” highlighting what he called a regulation without rules approach and urging Congress to bring it under appropriations. Ranking Member Waters (D-CA) applauded the Bureau's “excellent” recent work while Rep. Foster (D-IL) encouraged the Bureau to remain vigilant.

Testimony

Director Chopra focused on consumer debt issues highlighted in the CFPB's recent consumer credit card market report. He also emphasized Bureau enforcement actions as well as efforts to combat “junk” fees, praising the CFPB's open banking proposal and the nonbank payment provider rulemaking ([see FSM Report PAYMENT27](#)).

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Q&A

- **Open-Banking Proposal:** Endorsing the Bureau’s open-banking proposal for its “really smart stuff,” Chairman McHenry asked about banks’ ability to use anonymized data to create new financial products; Director Chopra said that the Bureau is working through this issue due to a greater risk of consumer reidentification. The Chairman also asked if Mr. Chopra interprets the word “funds” to encompass digital assets in proposed rulemaking; Director Chopra said the Bureau has looked at court opinions with a “judicious” approach to identify consumer payments use-cases. Rep. Scott (D-GA) asked Director Chopra to explain how comments received on the Bureau’s [RFI](#) are informing Bureau’s work; Director Chopra emphasized “scary” dossiers being sold online.
- **Small-Business Reporting Rulemaking:** Rep. Williams (R-TX) asked Director Chopra if he would overturn this rule if both chambers vote to nullify it via the CRA; Director Chopra said he would comply with the law, not mentioning that President Biden is expected to veto any resolution repealing this rule. Reps. Barr (R-KY) and Meuser (R-PA) took serious issue with demographic reporting requirements, while Rep. Fitzgerald noted privacy concerns about public release of small-business reporting data, suggesting that the Bureau publish results of its reidentification study and then take comments; Mr. Chopra said the Bureau is many years away from any data publication. Reps. Nunn (R-IA) and De La Cruz (R-TX) also raised concerns that the rule would impair small-business credit access.
- **Credit Card Rulemaking:** Rep. Wagner (R-MO) excoriated the Bureau’s credit card late fee proposal ([see FSM Report CREDITCARD36](#)) on grounds that it lacks sufficient cost-benefit analysis and would require on-time payers to subsidize delinquent ones. Mr. Chopra disputed this and defended the Bureau’s cost-benefit analysis. Rep. Wagner also asked if the CFPB has accounted for how the proposal would interact with other prudential regulatory requirements and if the Bureau engaged with other prudential regulators; Mr. Chopra said it had, arguing that credit card issuers have flexibility with risk-based pricing.
- **Compliance Burden:** Reps. Posey (R-FL) and Lucas (R-OK) pressed Mr. Chopra on whether his agency performs cost-benefit analysis on the interaction of all of its regulations; Director Chopra said that the Bureau looks at this in process of proposing rules, adding that it strives to have fidelity toward a competitive market. Reps. Foster and Vargas (D-CA) defended the Bureau on grounds that benefits such as protection from discrimination are difficult to quantify, a sentiment Director Chopra emphatically echoed.
- **Political Agenda:** After asking Mr. Chopra point blank if he is a capitalist or a socialist, Rep. Luetkemeyer (R-MO) said that the Administration and CFPB want to turn the financial services industry into a utility; Director Chopra stated that he is a capitalist and emphasized that the Bureau and Administration have sought to enhance industry competition. Noting growing industry consolidation, Rep. Luetkemeyer also said rules

are “choking” small institutions; Director Chopra only agreed that a discussion about consolidation is warranted.

- **UDAP:** Noting the Bureau’s policy statement defining abusive acts or practices ([see FSM Report UDAP8](#)) Rep. Barr asked Director Chopra if financial services companies should be held liable for failing to comply with novel guidance on a retroactive basis; Director Chopra said no, arguing that the statement was intended to bring clarity to entities. Rep. Barr said he intends to introduce legislation ensuring that the Bureau does not apply standards retroactively. Rep. Houchin (R-IN) later echoed these concerns, accusing the Bureau of “governing by press release.”
- **Overdrafts:** Reps. Williams (R-TX) and Timmons (R-SC) asked Director Chopra if the Bureau is designing a rule to totally ban overdraft fees; Mr. Chopra denied this, acknowledging that legal overdraft fees have an important role and the CFPB is focused on where overdrafts are used illegally.
- **FDIC Harassment Scandal:** Rep. Huizenga (R-MI) grilled Director Chopra about whether he would act consistently with his vote to oust former FDIC Chair McWilliams regarding current Chair Gruenberg’s accountability for the FDIC’s harassment scandal; Mr. Chopra only emphasized that the FDIC’s internal investigation will be heeded. Rep. Rose (R-TN) later asked for cooperation with any Congressional investigations and if Mr. Chopra had himself ever been investigated for workplace misconduct; Mr. Chopra said he had not.
- **AI:** Rep. Foster asked Director Chopra for his views on the threat of deep-fake impersonations; Director Chopra strongly supports legislation to better address identity verification but also noted potentially enormous benefits for businesses and consumers. He also called for stronger digital identification layers, which he said would reduce costs for banks. Reps. Torres (D-NY) and Vargas (D-CA) raised serious concerns about AI; Director Chopra acknowledged significant consumer use-cases, emphasizing the need for regulatory and industry caution, also noting that the CFPB would consider using AI to enhance its enforcement capabilities.
- **Digital Assets:** Rep. Davidson (R-OH) asked how Mr. Chopra sees the scope of the CFPB’s role in digital assets with respect to protecting self-custody and privacy; Director Chopra emphasized that the Bureau’s role relates to payments, with its focus on large payment apps to ensure they comply with the same standards as banks. Rep. Torres also asked for Mr. Chopra’s views as to the Bureau’s crypto-regulatory role; Mr. Chopra again emphasized that use-case is more relevant than the underlying technology but noted that rapidly scaling stablecoins are a consumer concern the Bureau is watching.
- **Immigration Status Guidance:** Rep. Luetkemeyer argued that the Bureau’s and DOJ’s [guidance](#) adds confusion to lending decisions in which immigration status is an issue and said that it also contradicts KYC laws; Director Chopra disputed this. After Rep. Velasquez (D-NY) praised the guidance, Director Chopra emphasized that it is

intended to clarify that, although lending decisions can consider immigration status, they cannot consider national origin.