



FedFin Client Report

Thursday, November 30, 2023

Chopra Breezes Through Senate Banking as Senators Revisit Concerns Over AI, FRC Bidding Process

Client Report: CONSUMER54

Executive Summary

Today's Senate Banking hearing with Director Chopra was even more cordial than yesterday's HFSC session ([see *Client Report CONSUMER53*](#)) even though Republicans continued to criticize the Bureau's recent rulemakings. Today's hearing also showcased renewed focus on JPM's controversial acquisition of FRC, with Sen. Vance (R-OH) grilling Mr. Chopra about the bidding process. Director Chopra emphasized that the least-cost test was adhered to and insisted that JPM's bid was found to be higher than PNC's, although he promised to provide the senator with more information. Chairman Brown (D-OH) raised serious concerns over AI lending decisions and explainability, while Sen. Warner (D-VA) called it an issue "tailor-made" for FSOC. Director Chopra agreed that much more regulatory attention must be devoted to gen-AI, also noting that FSOC in the past has served as a "book-report club" and should wield its tools more forcefully. Pressed by Sen. Rounds (R-SD) on overdrafts, Mr. Chopra today went further than he did before the House, saying that there is industry support for clear rules and the Bureau is considering one laying out abuses that could lead to enforcement actions.

Analysis

Opening Statements

Chairman Brown praised the Bureau's recent rulemakings, while Ranking Member Scott (R-SC) criticized the CFPB for straying from its mission and argued that it does more harm than good. In contrast to HFSC Chairman McHenry (R-NC) yesterday, he also criticized the Bureau's open banking proposal ([see *FSM Report DATA4*](#)) on grounds that the Bureau has so far failed to account for its potential regulatory burdens.

Testimony

Director Chopra's testimony was the same as that delivered before HFSC yesterday ([see *Client Report CONSUMER53*](#)).

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Q&A

- **FRC Bid:** Sen. Vance (R-OH) raised serious concerns about FRC's bidding process, asking Director Chopra point blank for the spread between JPM and PNC's offers to buy FRC; Director Chopra defended the process, highlighting the FDIC's least-cost test and noting that JPM's bid was found to be higher, but also promising to deliver more information. Sen. Vance asked if Mr. Chopra has any concerns about the regulatory waiver of requirements that a failed bank purchaser not accumulate 10% of national deposits; Director Chopra said he has great worries about industry concentration.
- **AI:** Chairman Brown asked Director Chopra to explain what the Bureau is doing to ensure that AI-driven credit denials are explainable; Director Chopra said there is no "fancy technology" exception to federal law and said the Bureau will use its authorities to ensure compliance. Calling AI an issue "tailor-made" for FSOC, Sen. Warner (D-VA) focused on market manipulation threats and asked how Mr. Chopra is considering guardrails. Saying as noted that FSOC acts at times as a "book-report club," Mr. Chopra emphasized that AI cannot be opaque, flagging similarities to HFT. He also raised serious concerns about fraud and fakes as a tool to induce financial panic, calling on his Bureau as well as other regulators and lawmakers to look hard at AI's financial stability threats. Sen. Warner agreed that opacity is an issue, noting liability hurdles with regard to intent; Director Chopra agreed that intent-based standards are insufficient to block gen-AI abuse.
- **Overdrafts:** As noted, Sen. Rounds echoed concerns from yesterday about reports that the CFPB intends to apply TILA standards to overdraft fees; Director Chopra said that the Bureau is considering addressing overdraft "harms" via a rulemaking, but did not provide a timeline for doing so. Sen. Rounds suggested that the Bureau consider whether such a rule would limit access to overdraft protection; Director Chopra said there are noteworthy "differences" between relationship and non-relationship banks in overdraft practices and applauded competition. Sen. Menendez asked Director Chopra about what can be done to reign in "excessive" fees; Director Chopra reiterated that consumer credit access is important, but argued that consumers should not be gouged and again acknowledged that the Bureau is considering a rule.
- **Credit Card Rulemaking:** Highlighting credit-card companies "record" profits, Sen. Warren (D-MA) forcefully defended the Bureau's credit card late fee proposal ([see FSM Report CREDITCARD36](#)) and asked Mr. Chopra if the Bureau's analysis proves that late fees are "junk"; Director Chopra noted that banks have numerous ways to disincentivize delinquent consumer payments. Stating that the Bureau has become a "political arm" of the Biden Administration, Sen. Daines (R-MT) sharply criticized the proposal and asked why the agency would proceed with a rule he said would harm consumers; Director Chopra disputed the assertion, stating that the Bureau is faithfully following the CARD Act, noting also that the rule would allow card issuers numerous avenues to ensure they are repaid.
- **Nonbank Payment Providers:** Chairman Brown asked Director Chopra what the

Bureau is doing to ensure that Big-Tech gets like-kind rules for traditional banking services; Mr. Chopra emphasized the importance of counteracting regulatory arbitrage, noting the agency's proposed rule ([see FSM Report PAYMENT27](#)). Ranking Member Scott raised concerns that the Bureau's proposal will stifle innovation; Director Chopra argued that the CFPB is not expanding its authority and is promoting competition via rulemaking. Sen. Menendez (D-NJ) praised the proposal, noting "rampant" scams and fraud and asking how the proposal would protect users; Director Chopra said he believes the proposal would level the playing field.

- **Small-Business Reporting Rulemaking:** Sen. Britt (R-AL) asked if Mr. Chopra believes the Bureau's small-business reporting [rule](#) will support small banks' ability to serve as primary lenders for small businesses; Mr. Chopra only said that he hopes small banks will provide small business credit, also emphasizing that the Bureau is under court order to complete the rule. Sens. Britt and Daines also raised concerns that the Bureau's planned data release will lead to reidentification; Mr. Chopra reiterated that the data release is years away and disputed that it would enable borrower identification.
- **Capital Proposal:** Sen. Hagerty H(R-TN) criticized the capital proposal ([see FSM Report CAPITAL230](#)) and asked if Mr. Chopra believes it will reduce credit availability; Director Chopra emphasized countercyclicality and the need to avoid "bailouts." Sen. Britt asked Director Chopra if he believes the banking system is strong; Mr. Chopra noted pockets of "resilience issues."
- **BNPL:** Sen. Reed (D-RI) argued that BNPL is an area of responsibility the Bureau can assume to prevent consumer abuses; Director Chopra agreed, noting that the Bureau has begun to supervise some firms and emphasizing that basic standards are needed to prevent regulatory arbitrage and a race to the bottom.
- **Immigration Status Guidance:** Sen. Vance sharply criticized the Bureau's joint [guidance](#) with the DOJ, strongly discouraging the agencies from forcing banks' hands. Mr. Chopra reiterated that the statement affirms creditors can use immigration status when lending but must avoid national origin discrimination.