



Wednesday, November 1, 2023

## **Vance, GOP Seek to Reverse New Immigration Credit Ruling**

Following a joint CFPB-DOJ [statement](#) asserting that financial institutions’ “unnecessary or overbroad reliance” on immigration status in a credit decision may violate the ECOA, Sen. Vance (R-OH) along with all Republican members of the Senate Banking Committee today sent a scathing [letter](#) to CFPB Director Chopra and DOJ AG Garland urging the regulators to retract it on legal and financial stability grounds. The senators argue that the statement contradicts decades of Reg B guidance as well as guidelines for various federal lending programs, highlighting that the Bureau’s own interpretation of Reg B states that immigration status could have a bearing on a creditor’s ability to obtain repayment. The letter also calls consideration of immigration status in lending decisions “common sense,” arguing that failing to do so on a large scale could increase the odds of a major default event and thus threaten financial stability. No response is requested.

## **Congress Takes on SEC Custody Construct**

Members of Congress are mobilizing against the SEC’s custody proposal ([see FSM Report CUSTODY5](#)) following yesterday’s block-buster GAO ruling against the SEC’s [SAB 121](#) ruling, a ruling with considerable impact also in the broader custody rewrite. Republicans responded to the GAO with anticipated [demands](#) for rapid Congressional Review Act repeal. Sen. Lummis (R-WY) was most pointed, saying specifically that she plans to press a CRA resolution. HFSC Chair McHenry (R-NC) was somewhat more circumspect even as he strongly supports repeal. We expect the resolution to begin in the Senate to speed work on it in light of continuing House disarray. Should it pass there – likely, we think – it will proceed to the House and then a probable Presidential veto.

Separately, HFSC Financial Institutions Chair Barr (R-KY) [reportedly](#) led a bipartisan letter to the banking agencies on other provisions in the custody rule such as the segregation requirements our initial analysis noted as likely to prove particularly problematic. The letter also suggests that these segregation requirements would put custody clients ahead of insured depositors, including resolution costs.

## **Powell Pledges Fed Capital Consensus**

In the midst of much monetary-policy discussion [today](#), Chair Powell now said more publicly that the Fed will work towards consensus on controversial capital rules. Rep. Barr (R-KY) [previously](#) said Mr. Powell assured him that the final rule will reflect the Board of Governors as a whole, encouraging Rep. Barr and others that Vice Chair Barr will need to modulate some of the proposal’s most controversial provisions. That said, the Fed will also need to ensure that the FDIC and OCC agree with its compromises, a challenge in past capital rulemakings that considerably delayed matters and in one case led the FRB and OCC to issue an interim final rule without the FDIC ([see FSM Report CAPITAL199](#)). Mr. Powell was also asked about the pending debit-card fee proposal ([see FSM Report INTERCHANGE12](#)); he said only that the Fed here is following the law and looks forward to public comment. He refused also to be drawn into discussion about whether the BTFP will be extended in 2024 given large unrealized losses across the banking system.

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### **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](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](#).

- **[INTERCHANGE12](#)**: As suggested when the Fed last year finalized controversial new debit-card routing requirements, the central bank is now proposing a sharp reduction in the cap mandated on debit-card interchange fees under the Dodd-Frank Act's Durbin Amendment for debit-card issuers with over \$10 billion in assets.
- **[AI3](#)**: In this report, we assess the detailed [executive order](#) (EO) issued late Monday afternoon after days of private showings of selected versions.
- **[DATA4](#)**: Following a request for information that was a de facto advance notice of proposed rulemaking, the CFPB has now proposed a preliminary, but binding framework for consumer data rights covering consumer "transaction" accounts offered by banks, credit unions, and – a departure from the initial outline – nonbanks/fintechs.
- **[GSE-102323](#)**: As noted in our report [earlier today](#), the Federal Reserve's latest financial-stability [report](#) expresses deep misgivings about complex securitizations.
- **[SYSTEMIC97](#)**: As [promised](#), this in-depth report assesses Friday's semiannual financial-stability report from the Federal Reserve.
- **[DEPOSITINSURANCE122](#)**: Bipartisan senators have introduced legislation to provide FDIC coverage for certain noninterest-bearing transaction accounts, a move designed to prevent the stress and potential systemic risk evident when Silicon Valley and Signature Banks failed in March.
- **[GSE-101723](#)**: [As we noted](#) earlier this month, the Federal Reserve inserted a significant capital provision for credit-linked notes in an otherwise-obscure FAQ.
- **[GSE-101623](#)**: The White House today rolled out a [new housing plan](#) that smacks mightily of many old housing plans.
- **[GSE-101323a](#)**: With smaller lenders [today](#) joining MBA, NAR, and HomeBuilders' [campaign](#) to squeeze the 30-10 spread, we take a look at the odds the White House, Fed, or Treasury will do as hoped.
- **[GSE-101323](#)**: As we noted yesterday, OMB's Office of Information and Regulatory Affairs (OIRA) has pronounced a new pro-competition standard for all existing and prospective federal regulations.
- **[CONSUMER52](#)**: Using its advisory process to issue guidance that may lead to enforcement actions, the Bureau has for the first time set standards for the obligations of large banks and credit unions to respond to certain consumer inquiries.
- **[REFORM228](#)**: As we [noted](#) yesterday, the Basel Committee's October meeting concluded not only with plans for new disclosure consultations, but also a [report](#) on lessons learned from the 2023 crisis.
- **[GSE-100223](#)**: As we noted earlier today, the FRB has issued a seemingly technical [FAQ](#) liberalizing the treatment of certain credit-linked notes.