FedFin Daily Briefing

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CFPB Small-Business Reporting Reg Remains

In conjunction with his expected veto last night of legislation that would have overturned the CFPB's small-business reporting rule, President Biden indicated that the Bureau's rule is central to CRA implementation and would bring transparency to small-business lending. He also argued that overturning the rule would hinder government oversight of what he calls abusive and predatory lenders and create obstacles to addressing gaps in capital access for minority- and women-owned businesses.

FSB, IOSCO Try Get-Tough Approach to OEF Illiquidity

As promised, the FSB and IOSCO today finalized recommendations designed to enhance OEF resilience. We expect the SEC's pending OEF rule to be finalized in accord with standards over which the agency had considerable influence. Changes to the FSB's 2017 OEF recommendations now build on IOSCO's express liquidity standards to press for liquidity tools such as mandatory redemption delays or buffers. The recommendations provide extensive detail on these ex-ante liquidity tools, detailing ways in which asset managers should measure underlying asset liquidity and then rebalance funds or increase holdings of highly-liquid assets to ensure appropriate same-day liquidity. Global regulators also want actions to reduce OEF shock amplification via swing pricing, redemption limits, express gates, or other tools detailed by IOSCO. As is typical of FSB releases, global regulators also recommend numerous steps to enhance data availability, cross-border sharing, and OEF transparency via public disclosures.

HFSC GOP Demands CFPB Nonbank Delay, Clarification

HFSC Chairman McHenry (R-NC) and nineteen Committee Republicans sent a letter to CFPB Director Chopra urging the Bureau to extend by thirty days the comment deadline for its proposal to supervise large nonbank payment providers (see FSM Report **PAYMENT27**). The Members raise concerns over what they call the rule's ambiguous scope and the Bureau's inability to track the proposal's increased compliance costs. The letter also takes issue with the rule's potential applicability to digital assets, requesting information regarding what cryptoasset transactions are covered and whether it extends to digital wallet providers. No deadline for a response is set.

FERC Passive-Ownership Inquiry Poses Challenges to Funds, Banks

The Federal Energy Regulatory Commission has opened another avenue scrutinizing the extent to which large asset managers may control the companies in which they invest. In a "notice of inquiry," FERC seeks views on the extent to which investment-fund stakes in electric utilities and transmitting companies constitute control as well as on how control should now be defined. Investment companies now have blanket authorization to own utility shares without even the largest positions constituting control, with this same wide-open authorization also applying to BHC and bank fiduciary positions. It is unclear how the FRB and OCC would consider these positions if FERC deemed them control; any decision to also do so could make it impossible for banking organizations to continue to hold these shares. FERC's concerns are sparked by the large positions the three major index funds now hold in the electric-power sector, giving these companies undue leverage over utility business decisions especially with regard to "public policy." FERC does not say what this entails but it is surely related to concerns that the funds pressure utilities to "go green" in costly ways injurious to other shareholders. The issues here were raised late last year by then Ranking Senate Banking Member Toomey (R-PA) when it came to asset-management stakes in banks, with GOP staff subsequently issuing a lengthy memo arguing that the investment companies exercised de facto control over some banks that warranted converting the asset managers to BHCs. The FRB promised to look into the matter but appears yet to have done so. The funds and State Street are also under pressure from House Republicans with regard to their overall power to demand ESG policies beyond that appropriate for passive owners. Notably, following the FERC inquiry, FDIC Director McKernan – a former Toomey staffer – tweeted that the FDIC should assess investment funds with regard to bank ownership stakes. It seems unlikely that Mr. McKernan's Democratic colleagues – who control the FDIC board – will agree to do so. Comments on the FERC inquiry are due ninety days after *Federal Register* publication.

FDIC Approves Significantly Revised Sign, Advertising Standards

The FDIC Board today unanimously approved a final rule modernizing requirements for use of the FDIC's official sign and clarifying what constitutes misrepresentation and misuse of the FDIC's name or logo. Key changes from the proposal (see FSM Report **DEPOSITINSURANCE117**) include clarifications of compliance when physical segregation of deposit and non-deposit products is difficult, disclosure standards for non-deposit products offered by nonbanks that also offer pass-through deposit insurance, and narrower website pop-up requirements for non-deposit products. The final rule also dispenses with the proposed definition of crypto assets and does not express a view on digital asset deposit status, a feature that Vice Chair Hill strongly endorsed even as he called for rapid action to determine whether tokenized deposits are similar to traditional deposits, building on agency work that appears to have stalled in 2021. The only other notable comments came from CFPB Director Chopra, who was emphatic that nothing in this regulation limits CFPB or state enforcement authority against deceptive practices. Mr. Chopra went on to state that UDAAP could be a tool to target material misrepresentations or omissions, promising to work with the FDIC and state authorities to ensure this is the case. In addition, he emphasized the need for federal and state oversight to prevent exploitation of digital dark patterns and other abusive marketing practices, noting that the Bureau is focused on this when they pertain to misleading deposit insurance claims.

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 or clients may obtain the reports/analyses by e-mailing info@fedfin.com giving the requested item name, firm, and e-mail address. To learn more about *GSE Activity Reports*, click here.

- **ILC17:** Senate Banking Committee Chairman Brown (D-OH) is now leading a renewed bipartisan charge to limit the ability of nonbanks to use industrial loan companies (ILCs) to gain access to bank privileges without the parent-company supervision required of all other domestic IDI parents.

- **GSE-121923:** The CFPB yesterday released a fascinating research blog looking at cash-out refis.

- **FSOC29:** This year's FSOC report trods much old ground with two exceptions. The first pertains to a new focus on artificial intelligence, machine learning, and new, generative technologies.

- **GSE-121423:** In a blog post today, Fannie quietly renews its quest for alternatives to traditional title insurance.

- **GSIB23:** The agencies' capital proposal (see FSM Report **CAPITAL230**) unsurprisingly dominated discussion at today's Senate Banking hearing with big bank CEOs.

- **FINTECH33:** At today's HFSC Digital Assets Subcommittee hearing on banking agency financial innovation, Republicans raised concerns about the Fed's novel activities guidance (see FSM Report **FINTECH32**), interagency guidance on third-party risk management (see FSM Report **VENDOR10**), and the SEC's predictive data analytics proposal.

- **CONSUMER54:** 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.

- **GSE-113023:** A new FRB-NY study confirms that 83% of loans from 2000-2022 went to first-time homebuyers, compared to 56% for the GSEs and 57% for private lenders.

- **CONSUMER53:** In sharp contrast to most recent HFSC hearings with CFPB Director Chopra, today's session was relatively calm.

- **GSE-112723:** The most significant thing in FHFA's final capital rule is not what is to be done, but what FHFA left out: ending the GSEs' advanced-approach requirement.

- **DEPOSITINSURANCE122:** As the law requires and the FDIC Chairman promised after SVB and Signature Bank were declared systemic, the FDIC has finalized its proposed approach to imposing a systemic assessment to reimburse the Deposit Insurance Fund (DIF) for the resolution costs related to uninsured deposits following a systemic designation.

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