



FedFin Weekly Alert

Monday, June 10, 2024

❑ ONE IN, ONE OUT BUT ALSO IN

This week will feature at least two controversial officials in the Congressional hot seat. We'll be watching the sizzle even as we focus on whether anything is actually fried. When it comes to CFPB Director Chopra, we think he'll walk away just a bit brown around the edges. FDIC Chair Gruenberg will definitely be grilled, but not finished. Unless HFSC Republicans have something particularly egregious that can be inextricably tie to Mr. Gruenberg, the FDIC chair will stick by his plan to await his replacement before cleaning out his office. Given the small odds on Senate confirmation no matter how saintly the White House nominee, Mr. Gruenberg will just take the heat.

What might substantively come of all this? Not much when it comes to the FDIC hearing, although we'll also watch to be sure nothing adheres to Acting Comptroller Hsu. He too has been called to testify on what he knew and when he knew it. In light of his Gruenberg support at the supervisory hearings last month, Republicans will try to align Mr. Hsu as closely to Mr. Gruenberg as they can to pressure him to change his regulatory tune. Here too, we doubt much of substance will transpire, but we're watching closely and advising quickly.

Mr. Chopra's seat is secure since the Supreme Court [unequivocally endorsed](#) the CFPB's constitutionality. Republicans still don't like that one little bit and thus will still press proposals for a commission, appropriated funding, and other changes. Mr. Chopra will continue to say the agency's structure works fine, but is up to them to change and, until they do, he'll continue as before. As before and now means a raft of new edicts, with the most recent being an [RFI on mortgage closing costs](#), a proposed redesign of BNPL consumer protection ([see FSM Report CREDITCARD38](#)), and new constraints on what the CFPB calls "fine print" forms ([see FSM Report CONSUMER57](#)). The Bureau also last week finalized its [rules for standard-setters](#), readying the regime for finalized open-banking rules later this fall ([see FSM Report DATA4](#)).

What's next from the Bureau? We're watching for lots more advisories, circulars, and interpretive rules so that the Bureau can demand to get its way with all the muss and fuss of the Administrative Procedure Act slowing things down enough to push decisions into 2025 when Mr. Chopra's tenure might end. It is clear in the fine-print standard that the Bureau is going after standards it doesn't like as well as standards Congress or the states have expressly embodied in law. Among those to watch are the manner in which banks reimburse consumers claiming fraud, an issue Senate Democrats are particularly [fond of asking the Bureau](#) to tell banks to do more when it comes to Zelle. What else? AI comes

to mind following [Treasury pronouncements](#) last week, but Mr. Chopra wants to do lots more and knows he will need to act fast to get it done.

Headlines From the Past Week's Daily Briefings

June 3

- **Biden Sides with the SEC** - President Biden vetoed the Congressional Review Act resolution that had passed both the House and Senate to revoke the SEC's cryptoassets custody accounting bulletin ([see FSM Report CUSTODY5](#)).
- **IOSCO Tries Rearguard Action to Curb High-Risk Syndications, CLOs** - IOSCO [issued](#) final good practices for leveraged loans and CLOs, an effort sparked by higher credit risks and a shift to nonbank investors.
- **GAO Report Discloses New Fed Process for Stress-Test Result Review** - GAO's [report](#) on Federal Reserve actions on recent priorities identified in last year's GAO [report](#) for the first time discloses that the Board in March of this year finalized a process in which staff are to identify capital uncertainties and related risk tolerances related to stress testing when results are communicated to the Board.
- **HFSC Plans to Press Agency Tokenization Review** - The HFSC majority-staff [memo](#) on the tokenization hearing confirms that the panel will focus on two bills to force U.S. agencies to study this new technology and its applications under current law.
- **CFPB Targets Nonbank Repeat Offenders** - Continuing a raft of new rulemaking since the Supreme Court [saved](#) its charter, the CFPB [finalized](#) its proposed registry of nonbank "repeat offenders" ([see FSM Report CONSUMER47](#)).

June 4

- **FRB-NY: Less Insurance, More Bank Risk** - With Congress and many states increasingly worried about the scarcity and cost of property insurance, the Federal Reserve Bank of New York has released a timely [study](#) concluding that, even though banks reduce exposures when insurance is scaled back or eliminated, continuing exposures to higher-risk assets acquired when insurance was available and correlated risk across the applicable asset class still make banks subject to greater risk even with reduced exposures due to the propensity of banks to book higher-risk loans when they expect at least some loss to be mitigated by insurance.
- **CFPB Plans to Read the Fine Print** - Continuing its regulatory rollout after the [critical SCOTUS decision](#) and ahead of the election, the CFPB [issued a circular](#) – i.e., a de facto rulemaking – barring contractual "fine print" obscuring consumer rights or requiring waivers of rights that cannot in fact be waived under applicable law.
- **Treasury Official Outlines AI Systemic, Competitiveness Concerns** - Presaging comment later from Secretary Yellen, Treasury Under Secretary Nellie Liang's remarks [urge](#) global regulators to build on existing risk-management frameworks to

address AI before examining if AI poses idiosyncratic hazards to safety and soundness, consumers, or financial stability.

- **CFTC Committee Outlines Revisions to End-Game Derivatives Requirements** - The CFTC's Global Markets Advisory Committee [advanced](#) two possible rewrites to one of the Basel end-game proposal's thornier problems: variation-margin requirements ([see FSM Report CAPITAL233](#)).

June 5

- **CFPB: Open Standard-Setting Needed for Open Banking** - The CFPB [finalized](#) part of its proposed open-banking regulation ([see FSM Report DATA4](#)) outlining the qualifications to become a recognized industry standard-setting body.
- **GOP Presses Tokenization as Next Fintech Advance** - At its hearing, the HFSC Digital Asset Subcommittee addressed tokenization with an eye to advancing [bills](#) to require federal regulators to study the benefits of tokenizing real assets.
- **BIS Plans to Expand China-Led CBDC Project** - The BIS [announced](#) that Project mBridge has reached the minimum viable product stage, now going beyond the initial development of a DLT multi-CBDC platform across participating central banks and commercial banks.

June 6

- **Next Step for U.S. AI Rules: Treasury RFI** - Ahead of its joint [conference](#) with Brookings, Treasury [released](#) an RFI on the uses, opportunities, and risks AI presents to the financial sector.
- **End-the-Fed Campaign Begins in the Senate** - Sen. Mike Lee (R-UT) introduced S. 4463, the Senate version of a [House bill](#) backed by the Freedom Caucus to abolish the Federal Reserve System.
- **Yellen Suggests AI Scenario Analyses** - Most striking in Secretary Yellen's [speech](#) on AI risk is her suggestion that FSOC press financial regulators to undertake scenario analyses to anticipate possible safety-and-soundness and systemic risk.
- **Hsu Outlines AI Implementation, Systemic Risks** - Following Secretary Yellen's remarks, Acting Comptroller Hsu [focused](#) on AI's systemic risk potential both in the way financial institutions would use AI ("tools") and how it might be used against financial institutions ("weapons").

June 7

- **Warren Demands Fast Action on FHLB Mission, Membership** - After pressing FHFA Director Thompson to address the FHLB member-eligibility rule at a recent Senate Banking hearing ([see Client Report MORTGAGE122](#)), Sen. Warren (D-MA) sent a [letter](#)

to FHFA Director Thompson urging the agency quickly to go beyond the pending RFI ([see FSM Report FHLB4](#)).

This Week

Wednesday, June 12

HFSC Hearing entitled: "Oversight of the FDIC's Failed Leadership and Toxic Workplace Culture." [10:00 am, 2128 RHOB]. Witnesses: **The Honorable Martin Gruenberg**, Chairman, Federal Deposit Insurance Corporation; **The Honorable Michael Hsu**, Acting Comptroller, Office of the Comptroller of the Currency; and **Johnathan McKernan**, Director, Federal Deposit Insurance Corporation.

Senate Banking Hearing entitled: "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress." [9:45 am, Dirksen Senate Office Building 538]. Witness: **The Honorable Rohit Chopra**, Director, Consumer Financial Protection Bureau.

Thursday, June 13

HFSC Hearing entitled: "The Semi-Annual Report of the Bureau of Consumer Financial Protection." [10:00 am, 2128 RHOB]. Witness: **The Honorable Rohit Chopra**, Director, Consumer Financial Protection Bureau.

Future Events of Note

Thursday, June 20

FHFA FHLBank & CDFI Symposium. [9:30 am, webcast]. Matters to be discussed: Updates on CDFI Funds, FHLBanks, and System at 100 Initiative.

Friday, July 19

FRB and OCC Joint Public Hearing on the proposal by Capital One Financial Corporation to acquire Discover Financial Services (9:00 am, webcast). Witnesses: TBD.

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](#).

- **CONSUMER57**: Deciding against finalizing a proposal to require a registry from nonbanks of their contractual terms, the CFPB has instead issued a circular – i.e., a de facto rulemaking – telling both banks and nonbanks and their service providers that contractual terms and conditions may not require consumers to waive rights to which they are entitled under applicable state or federal

law or which the Bureau believes likely to be “unenforceable.”

- **[GSE-060524](#)**: As [anticipated](#), the CFPB has advanced its campaign to quell mortgage closing costs.
- **[LIQUIDITY35](#)**: In addition to controversial provisions affecting bank-merger applications and stress-test transparency, legislation recently approved by the House Financial Services Committee includes a less-contentious provision forcing the Federal Reserve to reckon with longstanding problems affecting the use of its discount window, especially under stress conditions
- **[STRESS33](#)**: Legislation passed by the House Financial Services Committee would require the Federal Reserve to open the stress-test methodology behind the stress-capital buffer (SCB).
- **[MERGER17](#)**: New legislation approved largely on partisan lines in the House Financial Services Committee would force federal banking agencies to recraft bank-merger policy to increase procedural certainty and reduce the influence of third parties in both approval-review process and substance.
- **[CREDITCARD38](#)**: Using one of its tools for edicts without a formal rulemaking, the CFPB has issued an “interpretive rule” governing BNPL issuers as card issuers for purposes of the rules governing credit cards in areas such as periodic statements and dispute resolution.
- **[GSE-052424](#)**: When we assessed FHFA’s proposed approach to Freddie’s new home-equity [loan purchases](#), we noted that the product design eschewed old-style piggy seconds atop HLTV first liens.
- **[GSE-052024](#)**: As our in-depth analysis earlier today makes clear, FHFA’s RFI on FHLB mission compliance outlines a regulatory rewrite intended to handcuff Home Loan Banks not just to the housing mission expressly set in law, but also to a broader vision of the public good the agency believes the System’s taxpayer benefits are meant to serve.
- **[FHLB4](#)**: FHFA is now advancing an in-depth 2023 report on the Federal Home Loan Banks (FHLBs) with an RFI intended to lay the foundation for regulatory revisions tightening the FHLBs’ mission and thus the extent to which members benefit from low-cost advances without also disbursing these benefits to promote affordable housing and the public interest.
- **[PAYMENT29](#)**: Reflecting last year’s hard-learned lessons of Fedwire closing and bank failure, the Fed is seeking comment on plans to expand Fedwire’s operations to twenty-two hours a day, seven days a week, every day of the year (22x7x365).
- **[REFORM233](#)**: Faring somewhat better than he did yesterday ([see Client Report REFORM232](#)), FDIC Chair Gruenberg weathered repeated calls from Democrats to reform the agency’s culture without being subjected to direct demands that he resign.
- **[REFORM232](#)**: Democrats today were surprisingly scathing about FDIC Chair Gruenberg’s continued service, with Reps. Pressley (D-MA), Velázquez (D-NY), and Foster (D-IL) making clear they had lost confidence in him.
- **[COMPENSATION38](#)**: The OCC, FDIC, FHFA, and NCUA have revived what was in 2016 a proposal issued also by the FRB and SEC to revise incentive compensation at financial institutions in hopes of better alignment between compensation and safety and soundness.

- [GSE-051324](#): When FSOC released its systemic-designation [methodology](#) last year, the Council made it clear that nonbank mortgage companies faced top-down federal regulation.