



ML Strategies Update

ML
STRATEGIES

Jason Rosenstock
JRosenstock@MLStrategies.com

Abby Matousek
Amatousek@MLStrategies.com

Follow us on Twitter: [@MLSFinRegUpdate](https://twitter.com/MLSFinRegUpdate)

ML Strategies, LLC
701 Pennsylvania Avenue, N.W.
Washington, DC 20004 USA
202 296 3622
202 434 7400 fax
www.mlstrategies.com

FEBRUARY 4, 2013

Financial Services Legislative and Regulatory Update

Leading the Past Week

Even though the Senate sent a debt limit extension to the President's desk, eliminating one potential threat – at least temporarily – to the nation's economic health, this past week saw a seesaw of news items concerning the broader health of the economy. News that the U.S. economy contracted by 0.1 percent in the fourth quarter of 2012, augmented concerns about how the sequester, which by many accounts appears to moving full steam ahead to go into effect in March, will impact the economy. On the jobs front, the January numbers came in around expectation, at 157,000, and the December numbers were revised upward. However, unemployment remained steady at 7.8%, and so it came as bit of a surprise that the White House confirmed that the President's Council on Jobs and Competitiveness will shut down. All of this coming against a backdrop of the Federal Reserve announcing it will continue its accommodative monetary policies and efforts to stimulate the economy. The Fed said it will continue its bond-buying as part of plan to lower interest rates and keep the federal funds rate low as long as unemployment remains above 6.5 percent.

In other news, emboldened by the court's decision on President Obama's recess appointments, Republicans ramped up their attacks on CFPB Director Cordray and the CFPB, while Treasury Secretary nominee Jack Lew continued to make the rounds with lawmakers with Senator Jeff Merkley applauding Lew's support of a strong Volcker Rule and protections for underwater homeowners.

Legislative Branch

Senate

Senate Approves Debt Limit Bill

On January 31st, the Senate approved and the President signed the House passed debt limit bill (H.R. 325) in a 64 to 34 vote. The legislation delays the current borrowing cap of \$16.4 trillion through at least May 18th. Prior to passing the House bill, the Senate defeated several Republican amendments to the legislation, including a proposal by Senator Portman (R-OH) that would

automatically extend current spending should Congress fail to adopt a budget or CR and an amendment by Senator Toomey (R-PA) that would prioritize payments should Congress fail to raise the debt ceiling.

Republicans Continue to Call for Changes to CFPB

On February 1st, Senate Minority Leader Mitch McConnell (R-KY) and 42 Republican Senators [wrote](#) to President Obama to say they will continue their opposition to the confirmation of a director to the CFPB unless there are structural changes made to the Bureau. The letter reiterates Senate Republicans' "serious concerns about the lack of congressional oversight of the agency and the lack of normal, democratic check on its sole director." That same day, Senator Jerry Moran (R-KS) introduced [legislation](#) to make these changes to the Bureau, proposing a five-member-Senate-appointed board in lieu of the director and a budget to be set by Congressional appropriators. Interestingly, Senator Rob Portman (R-OH), who was one of two Republicans not to sign the letter, did not pledge to vote against Cordray, a fellow Ohioan, but backed Republican demands to restructure the agency in his own [letter](#) to the President.

Adding to these efforts was [legislation](#) introduced by Senators Mike Johanns (R-NE), Lamar Alexander (R-TN) and John Cornyn (R-TX) that would block the funding of any of the Bureau's activities that can only be undertaken with a confirmed director. The bill underscores the argument being made by Republicans that the appeals court decision invalidating the recess appointments to the National Labor Relations Board also invalidates Cordray's appointment. On the House side, Chairman of the Financial Services Committee Jeb Hensarling (R-TX) released a [statement](#) planning to once again advance a proposal to change the leadership and budgetary structure of the CFPB, commending his Senate colleagues for insisting "on first making the CFPB accountable before approving any nominee for director."

Lawmakers Make Bipartisan Request Information on "Too Big to Jail" Banks

On January 29th, Senators Sherrod Brown (D-OH) and Chuck Grassley (R-IA) sent a [letter](#) to U.S. Attorney General Eric Holder questioning whether certain "too big to fail" banks undermine the ability of the federal government to prosecute wrongdoing and impose appropriate penalties. The lawmakers voiced concern that the Justice Department is avoiding pursuing legal action against the nation's largest banks for fear of negative implications to financial markets and the economy. The letter requests that the DOJ respond with the names of any banks that the department may have deemed "too big to jail." Senator Brown is the author of the [Safe, Accountable, Fair & Efficient \(SAFE\) Banking Act](#), legislation that would prevent any one financial institution from becoming so large and overleveraged that its collapse could impact the broader economy, and he was joined by Sen. David Vitter (R-LA) in getting the Government Accountability Office to study how banks with assets of \$500 billion or more benefit from the belief that the government would not let them fail in a crisis.

Lawmakers Plan Expansion of Federal Support for Underwater Homeowners

As part of the ongoing effort to expand government-backed refinancing for underwater borrowers, Senator Jeff Merkley (D-OR) is working on legislation to create a federal trust to purchase or guarantee refinanced mortgages. The proposal will be similar to one Merkley floated last year and would provide options to borrowers with private loans. Last Congress, efforts to expand federal refinancing were unsuccessful; however, Senators Robert Menendez (D-NJ) and Barbara Boxer (D-CA) plan to reintroduce a version of a bill to expand HARP by ensuring lenders will not be forced to absorb the loss on refinanced loans that default. Should Congress not act to assist underwater homeowners, the Treasury has plans to move ahead with rate

modifications.

House of Representatives

Lawmakers Request Additional Insight into Foreclosure Settlement

Lawmakers are calling for Federal regulators to release additional details regarding the mortgage foreclosure settlement reached in January. In a January 31st letter to the Federal Reserve and the OCC, Representative Elijah Cummings (D-MD) and Senator Elizabeth Warren (D-MA) [wrote](#) that “it is critical that the OCC and the Federal Reserve disclose additional information about the scope of harms found to establish confidence in the sufficiency and integrity of the settlement.” Representative Maxine Waters (D-CA), also sent a similar letter to regulators, echoing Cummings and Warren and requesting regulators provide the results of the reviews so far, including any foreclosure abuses detected, and a breakdown of how much was paid to the independent consultants hired to find them.

Executive Branch

CFPB

Bureau Seeking Information on Financial Products Marketed to Students

On January 31st, the CFPB [announced](#) the launch of an inquiry into the impact of financial products marketed to students through colleges and universities. The Bureau hopes to use the information gathered in the inquiry to determine if such marketing arrangements are in the best interest of students. The Credit CARD Act of 2009 (CARD Act) restricted financial institutions from using certain types of marketing practices on college campuses and made agreements between credit card issuers and institutions of higher education subject to public disclosure. The CFPB is seeking input on a number of issues including: what information schools share with financial institutions; how campus financial products are marketed to students; what fees students are charged; how schools set up marketing agreements; and student experiences with these products.

Antonakes Names Acting Deputy Director of the CFPB

On January 31st, the CFPB [announced](#) that Steve Antonakes will serve as Acting Deputy Director until a replacement is named for departing Deputy Director Raj Date. As Antonakes’ role is temporary, he will maintain responsibility for his current duties as the Associate Director for Supervision, Enforcement, and Fair Lending at the CFPB.

Potential Legal Challenge to CFPB Director on Horizon

Amid the fallout from the court decision over the recess appointments to the NLRB continues, (see above) there is also a potential legal challenge to the Bureau over Director Richard Cordray’s appointment on the horizon. A California law firm sued the Bureau over the treatment of struggling homeowners. The law firm has said it would favor settlement of the case, meaning the Bureau would not risk a similar Federal court ruling which invalidated the NLRB appointments. CFPB spokeswoman Moira Vahey has said the Bureau “is moving forward with the case as planned.”

CFTC

CFTC to Hold Roundtable on Enhanced Protections for Customer Funds

On February 5th, the CFTC will hold a [public roundtable](#) to discuss the Commission’s proposed rulemaking, “Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations,” which was published for public comment on November 14, 2012. The roundtable will focus on: the role of an

examination expert to review Self-Regulatory Organization (SRO) examination programs; the proposed disclosures of firm specific risks and financial reporting; the proposed requirement for segregation and secured acknowledgement letters; and the proposed residual interest requirements for Futures Commission Merchants. The proposed customer protections were issued following the collapse of MF Global and Peregrine Financial. Comments on the proposed protections can be filed through February 15th.

CFTC Planning Vote on Swap Execution Facilities

Last week, CFTC Commissioner Scott O'Malia said the Commission could vote on rules for swap execution facility trading platforms as early as mid-February. The CFTC originally proposed SEF rules in January 2011. Chairman Gensler echoed O'Malia's remarks, saying that is "critical to lower the uncertainty and allow these platforms the opportunity to compete and provide the services to the public that Congress mandated and expected." Gensler, speaking at a CFTC roundtable on the transition of some swaps trades to futures contracts cautioned that the Commission does not "want to lose what has become a core function of the futures market" and Commissioner Bart Chilton expressed concern about the "swapification" of the futures industry.

SEC

Money Market Mutual Fund Reforms at the Top of Agency's Agenda

On February 1st, Acting Chairman Elisse Walter said that money market mutual fund reforms are the agency's top priority and they are making progress on plans, including seeking industry input. Commissioner Daniel Gallagher said the same day that SEC staff has compiled a "term sheet" of recommendations on potential reforms. The sheet is intended to help the Commission reach consensus before drafting a formal proposal. While Gallagher did not shed light into whether the term sheet includes a proposal to move funds from a fixed NAV to a floating NAV, he indicated it is possible the SEC will be having an open meeting in February to review the some proposals. In addition to money market reforms, Chairman Walter has said the agency is also prioritizing the release of a cross-border derivatives rule, technology issues, and JOBS Act rules—including lifting the ban on general solicitation and crowdfunding.

Treasury

Closed FSOC Meeting Discusses Cybersecurity, Financial Developments

On January 31st, the FSOC met in a closed session to discuss cybersecurity chaired by acting Treasury Secretary Neal Wolin. According to a Treasury spokesperson the discussion focused on "the importance of continued, collective attention to cybersecurity in the financial system." the Council also discussed "recent fiscal developments" and the ongoing analysis of non-bank financial companies for designation as systemically significant.

Committee to Oversee Development of Legal Entity Identifier Selected

Matthew Reed, the current Chief Counsel for the Office of Financial Research, has been chosen to lead a committee overseeing the launch of the Legal Entity Identifier (LEI) system, a global system to identify parties in financial transactions. The goal of LEI is to enable regulators to view the exposures and counterparty risks across the financial system. The Treasury has so far been unable to issue a proposal for the LEI and has delayed the rulemaking to implement the LEI.

FHA

FHA Announces Increased Insurance Premiums, Limits to Reverse Mortgage Lending

On April 1st the FHA plans to raise annual insurance premiums and end the insurance of a large

number of reverse mortgages for seniors. The agency announced these changes in a [letter](#) to lenders that FHA-backed mortgages valuing less than \$625,500 with term lengths longer than 15 years will be charged an extra ten basis points. In addition, borrowers taking out an FHA mortgage after June 3rd will be required to pay insurance premiums throughout the life of the loan. Prior to the changes borrowers were allowed to skip the extra payments after paying off a portion of the principal. In a separate [letter](#), the FHA announced that borrowers will only be offered a Fixed Rate Saver Home Equity Conversion Mortgage (“HECM”) which offers a smaller payout of equity to the borrower and carry smaller upfront costs than the Standard Fixed Rate HECM, and that the Standard Fixed Rate HECM will no longer be available through the FHA. These changes come as Chairman Jeb Hensarling (R-TX) plans a series of hearing on the FHA, its role in the housing market, and the potential for a bailout.

Miscellaneous

Unemployment Compensation on Prepaid Card Result in Unneeded Fees

On January 29th, the National Consumer Law Center [published](#) a [report](#) which finds that Americans collecting unemployment benefits are paying millions in unnecessary fees as a result of policies favoring the use of prepaid cards. While the report notes that fees have decreased since its 2011 report on prepaid cards’ use in unemployment benefits, jobless Americans would still be able to avoid fees if they had to option of direct deposit. The report states that banks proposed the use of prepaid cards to states as a cost saving measure while ensuring that beneficiaries without bank accounts avoid check-cashing fees. However, NCLC says states should prominently offer direct deposit to the worker’s own account before offering a prepaid card option.

Upcoming Hearings

On Wednesday, February 6th at 9am, in 2128 Rayburn, the House Financial Services Committee will hold a hearing titled “FHA Financial Condition and its Role in Housing Market.”

On Wednesday, February 6th at 9:30am, in 210 Cannon, the House Budget Committee will hold a hearing on the budget and economic outlook prepared by the Congressional Budget Office.

On Wednesday, February 13th at 10am, in 2128 Rayburn, the House Financial Services Committee will hold a hearing titled “FHA November 2012 Actuarial Report and Potential for Taxpayer Bailout.”

* * *

[Click here to view ML Strategies professionals.](#)

Copyright © 2012 ML Strategies. All rights reserved.

This communication may be considered attorney advertising under the rules of some states. The information and materials contained herein have been provided as a service by the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.; however, the information and materials do not, and are not intended to, constitute legal advice. Neither transmission nor receipt of such information and materials will create an attorney-client relationship between the sender and receiver. The hiring of an attorney is an important decision that should not be based solely upon advertisements or solicitations. Users are advised not to take, or refrain from taking, any action based upon the information and materials contained herein without consulting legal counsel engaged for a particular matter. Furthermore, prior results do not guarantee a similar outcome.

The distribution list is maintained at Mintz Levin's main office, located at One Financial Center, Boston, Massachusetts 02111. If you no longer wish to receive electronic mailings from the firm, please visit <http://www.mintz.com/unsubscribe.cfm> to unsubscribe.