

April 9, 2018



15 Days in April

Congress returns to Washington this week for a three-week work period before another recess scheduled for the first week of May. While many believe that the window for major legislation in 2018 is rapidly closing, at the least we still expect to see financial services regulatory reform eventually signed into law, but we do not expect to see official progress on that bill during this work period. However, these next three weeks do promise to have plenty of action on the hearing front with testimony expected from CFPB Acting Director Mick Mulvaney, Federal Reserve Vice Chairman for Supervision Governor Randal Quarles, and Facebook CEO Mark Zuckerberg, among others. Below is a brief preview of what we believe to be on tap this month, subject as always to external or unexpected events (such as an escalating trade war) that could disrupt the expected schedule.

Financial Services Regulatory Reform – S.2155 and the House

When S.2155 passed the Senate last month by a vote of 67-31, attention immediately turned to the House and whether, how soon and in what form that chamber would take up financial services regulatory reform. Financial Services Committee Chairman Jeb Hensarling (R-TX) proposed a “bipartisan bucket” of approximately 30 different bills to be added to S.2155 and has said that the House would not take up the legislation until such measures were considered. Hensarling offered these bills ahead of Senate passage of S. 2155, but the fragile compromise of support with Democrats prevented these measures from being added before it passed the upper chamber. We do not see any reason to believe that the dynamics have changed, meaning that it will be very difficult to make substantive changes or additions to the reform package that could receive support from Senate Dems. The legislation therefore not only faces criticism from those who believe that it waters-down Dodd-Frank, but it also is subject to the efforts of Hensarling and the various interested parties who would like to see it opened back up to add or expand language.

Given all of this, timing and the exact path forward remain unclear, but we may begin to receive some clarity during the next several weeks. To date, House Republican leadership has supported Hensarling’s efforts, but it remains to be seen whether this support will continue as we move into the summer. There also have been indications of efforts to appease Hensarling in other ways (for example, two measures supported by the Chairman were included in the omnibus spending package passed by Congress last month), so we may see continued similar efforts in the coming months. Additionally, over 65% of House Republicans have cosponsored House legislation that is identical to at least one S. 2155 provision, which could be used to demonstrate broad support for the initiatives included in S. 2155 from House Members

not on the Financial Services Committee. Another key ingredient is the White House, and with President Trump commenting late last week on how this bill should be done “fairly quickly,” the pressure on House leadership to move the bill will only increase. Given all of that, again we expect, in the end, the President will sign into law regulatory reform legislation that looks remarkably similar if not identical to S. 2155 in its current form.

Banking/Financial Services Committee Activity

Several important hearings are scheduled to take place over the next three weeks in the Banking and Financial Services Committees. First up is testimony from CFPB Acting Director Mick Mulvaney. With the war of words ratcheting up between Mulvaney and Sen. Elizabeth Warren (D-MA), pay attention to later this week on Thursday when Mulvaney testifies in Senate Banking, the day after after he appears in front of the House Financial Services Committee. Next week will see the Fed’s Vice Chair for Supervision Randy Quarles appear in front of the Financial Services Committee on April 17th and then two days later in Senate Banking on the 19th. This will be the first appearance for Quarles since assuming this role at the Fed. While his term as Vice Chair for Supervision does not end until 2021, his appearance in a few weeks comes as he awaits confirmation by the Senate for a full 14-year term as a Fed Governor.

Outside of these key financial services hearings, much public attention this week will be focused on appearances by Facebook CEO Mark Zuckerberg, which are discussed below.

Data Security – Who’s Responsible and What’s Next?

Congress has struggled for years over what obligations to impose on companies with respect to consumers’ personal information. No federal law spans across all 50 states much less across industries when it comes to protecting consumer data. The nation’s privacy regulator, the FTC, does not have a confirmed leader to direct an agency whose primary tool is after-the-fact enforcement. Iterations of a more comprehensive data security and breach notification bill have inched their way through the congressional process with each successive data breach, but wrenches continue to be thrown in their progress in the form of the issues impacting Equifax and Facebook. The bills closest to being ready for prime time would have done nothing to address the oversights in these instances.

Coming back into town, Congress must continue to determine how best to protect consumers when nothing that has been thoroughly vetted would address the most recent breaches of trust. Therefore, they could do nothing except continue to hold executives feet to the fire through public hearings (see Zuckerberg below), consider new and essentially emergency legislation to hold Facebook or Equifax accountable, or pass data security and breach notification legislation that, while it wouldn’t have stopped the current issues, is thoughtful and addresses a real concern (just not all concerns). Unfortunately, so far there has been a lot of rhetoric but not much substance in response to the mishandling on consumer data, so time will tell whether Congress will act.

Next on the hot seat is Mark Zuckerberg, Facebook’s co-founder and CEO, who will face a bipartisan grilling April 10th (joint hearing of Senate Judiciary and Commerce Committees) and 11th (House Energy and Commerce Committee) where he will try to stem the flow of bad press that Facebook’s lack of adequate privacy controls has caused. Recently, Zuckerberg announced Facebook would be implementing the new, more onerous European standard known as GDPR (General Data Protection

Regulation) worldwide. It's to be seen whether telling U.S. lawmakers Europe's standard is better will go over well, but it raises the question of whether the US needs a GDPR of our own.

CFIUS/AML

We expect both the Senate and the House to continue to work on CFIUS reform legislation during the upcoming work period, and we are ultimately bullish on final passage by the end of the year. Chairman Crapo (R-ID) has indicated that he intends for the Senate Banking Committee to markup the Foreign Investment Risk Review Modernization Act (FIRRMA) before the end of April, though the bill that the Banking Committee ultimately reports will likely look different from the current draft as introduced by Senator Cornyn (R-TX). In the House, we expect at least one more hearing in the Financial Services Committee before Rep. Pittenger's (R-NC) bill is marked up. Pittenger is pushing for his bill, which is supported by the Administration, to be signed into law by the August recess, but that timeline is very ambitious.

We also expect the Senate Banking and House Financial Services Committees to continue work on Bank Secrecy Act/Anti Money Laundering regime modernization. The House is much further along in this exercise and expects to mark up a draft in the next two months. The Senate is still in the initial information gathering phase of the process. Beneficial ownership and balancing information sharing with privacy concerns are the biggest roadblocks the committees are facing.

Nominations

During this work period and likely throughout the spring and summer, the Senate will devote a significant amount of time to Trump Administration nominees. The process to consider one of the more newsworthy and potentially contentious nominees, CIA Director Mike Pompeo to become Secretary of State, begins later this week with a confirmation hearing in the Senate Foreign Relations Committee. Even though Pompeo was confirmed as CIA Director by a 66-32 vote, there are signs that his path to Foggy Bottom could be trickier. Other key positions that must be confirmed include Gina Haspel to replace Pompeo at the CIA and Ronny Jackson to be Secretary of Veterans Affairs.

On the financial services front, Jelena McWilliams, who was approved by the Senate Banking Committee in February to become Chair of the FDIC, awaits a vote by the full Senate, which is expected to come this month. The Federal Reserve still has four vacant positions, including the role of Vice Chairman. While Marvin Goodfriend was approved in February by Senate Banking to become a Fed governor, his nomination process has not gone smoothly and has drawn the opposition of at least one Republican (Sen. Paul), so it is unclear whether he will move forward. Additionally, as mentioned above, the Senate still must confirm Randy Quarles for his full 14-year term as a Fed governor.

Other

Below are some other issues that *could* receive some attention over the next three weeks. But with the midterms approaching and playing a role in nearly every issue, the legislative calendar is closing very fast, leaving little room for legislative accomplishments in any of the above and below areas.

Taxes and Budget

There have been rumblings about a second tax package, but aside from needling Democrats and making political hay, we don't expect there's much chance of a second package actually being passed into law,

especially since it would need to be done outside of the budget reconciliation process. One of the main areas being discussed is making the individual tax cuts permanent, something that Republicans would love to put Democrats in the position to vote against.

Also of note, the House Ways and Means Committee plans to formally introduce a bipartisan package of IRS modernization bills soon (a discussion draft was circulated in March) with the goal of a mark-up this month. IRS reforms have been identified by House leadership as a top priority before the August recess, and since such a package likely will have a significant amount of bipartisan support on the House Floor, it could lead the Senate to consider similar measures, but we will see.

On the budget front, along with a symbolic vote on a balanced-budget amendment in the House this week, there have been recent reports about President Trump and House Majority Leader McCarthy (R-CA) working on a rescission package to cut spending from the omnibus bill passed last month. While Democrats predictably slammed this idea, it likely would pass in the House but would face an uncertain path in the Senate. While it would only need a majority vote in the Senate, the thin majority would mean that nearly all Republicans would have to support such a measure, which is by no means a foregone conclusion. Regardless, such an effort will appeal to the Republican base, so it's consideration is currently likely to occur.

NFIP Reform

After being extended several times with each successive budget continuing resolution, reauthorization of the National Flood Insurance Program (NFIP) was decoupled from the budget process in the omnibus as it was extended until the end of July. This provides Congress a few months time to consider reforms to the program. There have been some recent efforts by FEMA to bring more private capital into the program, which is important to several Members interested in NFIP reform. While the extra time and efforts by FEMA may not be enough to move legislation in the Senate (comprehensive NFIP reform already has passed the House), it's a somewhat encouraging sign in the first few weeks after passage of the omnibus. However, it's still a long way from Congress not simply taking the easy route again and just extending the program again before July 31st.

Infrastructure Plan

Administration officials continue to tout the President's proposal, but there seems to be little appetite or time on Capitol Hill to even begin considering such a plan. Also, not exactly provoking confidence in such a plan moving forward this year is the fact that the chief architect of the President's \$200 billion infrastructure proposal unveiled in February, David "D.J." Gribbin, left the White House last week to consider new opportunities. And even President Trump told an audience in Ohio late last month that, because of Democrats, his infrastructure plan would probably have to wait until after the election. So, unless there's something that provokes action, consider infrastructure in 2018 dead.

Farm Bill

Negotiations on the Farm Bill hit a stalemate in the House right before the recess when House Agriculture Committee Chairman Conaway (R-TX) proposed changes to the Supplemental Nutrition Assistance Program (SNAP). This led Democrats on the Agriculture Committee to pressure Ranking Member Peterson (D-MN) to end negotiations because they had not had the opportunity to review bill text and opposed the proposed changes to SNAP. While the bill could still move in the House with just

Republicans, given the need for Democratic support in the Senate, Agriculture Committee Chairman Roberts (R-KS) has indicated he won't propose changes to SNAP and is working with Ranking Member Stabenow (D-MI) on a bipartisan bill. If the Senate is able to move a bipartisan Farm Bill, it could pressure the House to also act in a bipartisan manner. However, with the November elections only months away, Democrats in the House are beginning to envision what a Farm Bill would like if they're in control, meaning the impasse could continue and lead to the current Farm Bill just being extended past its September 30 expiration date.

Political

While there are no federal congressional primaries scheduled in April, a special election in Arizona on April 24th to fill the seat of former Rep. Trent Franks (R) is starting to receive more attention, especially given the upset win by Conor Lamb (D) in Pennsylvania last month. While President Trump won this Arizona district by 21 points and polling has suggested the Republican candidate, Debbie Lesko, is heavily favored, Republicans can't take anything for granted this year and are working to ensure this seat doesn't change hands.

After this special election, primary season begins to heat up in May, with eleven states holding primaries that month. For reference, the primary schedule for the remainder of the year is provided below:

May

8th – Indiana, North Carolina, Ohio, West Virginia

15th – Idaho, Nebraska, Oregon, Pennsylvania

22nd – Arkansas, Georgia, Kentucky

June

5th – Alabama, California, Iowa, Mississippi, Montana, New Jersey, New Mexico, South Dakota

12th – Maine, Nevada, North Dakota, South Carolina, Virginia

26th – New York, Colorado, Maryland, Oklahoma, Utah

August

2nd – Tennessee

7th – Kansas, Michigan, Missouri, Washington

11th – Hawaii

14th – Connecticut, Minnesota, Vermont, Wisconsin

21st – Alaska, Wyoming

28th – Arizona, Florida

September

4th – Massachusetts

6th – Delaware

11th – New Hampshire

12th – Rhode Island

Note – the Texas primary was on March 6th (with runoffs scheduled for May 22nd), the Illinois primary was March 20th and Louisiana has a nonpartisan blanket primary on the general election day (November 6th), although if one candidate receives at least 50% of the vote, they are the outright winner.