

June 4, 2018



June Comes Around Every Year

Congress returns this week for the first planned four-week work period since March, with many Members forced to balance their official duties in Washington with primaries back home. With one more weeklong break planned for the week of July 4th, that leaves a short period of time before the longer August recess, currently scheduled to begin on July 26th in the House and August 3rd in the Senate (although the Senate August recess looks likely to be shortened). In June, we expect the Senate to remain focused on judicial nominations as well as perennial items such as appropriations, the National Defense Authorization Act (NDAA), the Water Resources Development Act (WRDA) and the Farm Bill. In the House, much attention also will be paid to 2019 spending, with the first of potentially several appropriations “minibuses” expected this week. These and other topics are highlighted below as we preview what we believe to be the focus in Congress this month, subject as always to external or unexpected events that could disrupt the expected schedule.

Appropriations

The House this week is scheduled to take up a minibus of three appropriations bills – Energy and Water, Legislative Branch and Military Construction and Veterans Affairs. All indications are that this minibus process will continue throughout the summer in an effort to try and get some of the FY2019 spending bills across the finish line. On the financial services front, the House Appropriations Committee is scheduled to take up the 2019 Financial Services and General Government (FSGG) spending bill the week of June 11th. This bill, which passed the FSGG Subcommittee before the Memorial Day recess, includes over 125 pages of financial services reform policy riders. While some of these provisions have bipartisan support, the sheer amount of riders this year and the inclusion of controversial language (such as that impacting the CFBP/BCFP) likely will complicate the process for that legislation moving forward. There is also the problem of riders not being favored in the Senate, but all bets could be off if there are still spending measures to consider during a lame duck session after the midterms.

SBC/HFSC Activity

After seeing S. 2155 signed into law, all attention has now turned to whether there will be a second financial services reform package, this one focused on capital market formation, per a commitment House Financial Services Committee (HFSC) Chairman Hensarling (R-TX) said he received from Senate Majority Leader McConnell (R-KY) for the House considering S. 2155 as is. Hensarling’s committee is scheduled to hold the first of three June mark-ups this week. Legislation in these mark-ups could be included in such a package, as could bills that HFSC has passed throughout the past several months, including bills passed at marathon mark-ups last year in October, November and December and this year in January and March. While Hensarling has and continues to pass bills through HFSC and the House

Floor, many with strong bipartisan support, it still remains to be seen whether the Senate Moderate Democrats who came together to support S. 2155 have the appetite to do more, especially with the attention of many of them turning back home to the midterm elections. Senate Banking Chairman Crapo (R-ID) likely at least will hold a legislative hearing on some of these measures, but the steps after that are unclear. While the more time that S. 2155 is in the rear window may steer Democrats to come back to the table, the timeline could again conflict with the competing interests of November 6th. On top of all of this is again finding time on the Senate Floor in a quickly shrinking calendar. Therefore, the real opportunity to have financial services reform be put into the back of the net, could lie with the aforementioned FY2109 spending bills in a likely lame duck.

Other than potential work on a capital markets package, we expect the Senate Banking Committee to hold staff level meetings with the OCC and FDIC focused on implementation of S. 2155 (staff met with the Fed before the Memorial Day recess). Moreover, a hearing is possible next month with Fed Vice Chairman for Supervision Quarles, and we also expect to see a nomination hearing for Elad Roisman to succeed Piwowar as a commissioner at the SEC. In HFSC, several Trump Administration officials are scheduled to testify this month including Comptroller of the Currency Otting, SEC Chairman Clayton and HUD Secretary Carson. HFSC also is planning along hearings on CFPB/BCFP reform and the tax bill, among others.

CFIUS Reform

Based on two steps taken by the Senate during May, it seems likely that Congress will complete action on CFIUS reform later this year, perhaps even before the August recess. First, the Senate Banking Committee unanimously approved a compromise version of CFIUS reform negotiated by Chairman Crapo and Ranking Member Brown (D-OH). This version expands the CFIUS review process to capture a greater number of transactions, but also expands the export control regime to address the transfer of to-be-defined “critical technology” through joint ventures and other transactions. This formulation is intended to address concerns voiced by the private sector that the original version of the bill would overwhelm the CFIUS process, bringing transactions to a halt. Second, the Senate Armed Services Committee approved an amendment offered by Senator Scott (R-SC) to attach the Crapo-Brown CFIUS language to the defense authorization bill. Senate Majority Leader McConnell (R-KY) hopes to bring this bill to the Senate floor during June or July. This effectively ensures that CFIUS reform will advance as part of the “must pass” defense bill and possibly avoids a negotiation with the House over its own version of CFIUS reform.

Sanctions and Trade

Congress is expected to remain on the sidelines, ceding the spotlight on sanctions and trade to the Trump Administration. Some in Congress, including on the Republican side, are dismayed by what they perceive as the Administration’s lack of discipline in these areas – parting company with the European Union over Iran nuclear sanctions; stoking trade disputes with China, the European Union, and Mexico and Canada simultaneously; zig-zagging on specific tariffs; etc. Nonetheless, congressional Republicans are not planning to move legislation that would limit the President’s flexibility. With respect to Iran sanctions, signs at this point suggest the Trump Administration will not be cooperative toward the European Union with respect to financial services sanctions that could implicate European banks. While it is possible there could be a compromise reached before the November 2018 sanctions “snapback” date, no negotiations between the US and the EU appear to be underway.

Bank Secrecy Act/Anti Money Laundering Reform

HFSC continues to work on Bank Secrecy Act/Anti Money Laundering reform. The Committee's latest discussion draft dropped the most controversial section of the bill dealing with disclosure of beneficial ownership information, and they are hoping to introduce a final version early this month (some small tweaks may be made before introduction, but they expect the bill to be substantially similar to the latest discussion draft). The Committee is hoping to include the final text in one of the planned markups this month as well. The Committee has thus far struggled to gain consensus on the beneficial ownership section, and with the legislative window closing, decided to try and move forward with their BSA reforms while trying to do something legislatively on beneficial ownership on a separate track. There is potential for another beneficial ownership hearing in the coming weeks.

On the other side of the Hill, Senate Banking has not made any significant progress on a BSA/AML bill, as the team working on the issue has been keenly focused on the CFIUS reform effort. As such, we don't expect much Senate progress during the upcoming work period.

Financial Innovation

The Treasury Department continues to work on their report on technological innovation and nonbank financial firms, which we still expect to be released at the end of this month. Treasury also issued a memo in April with recommendations to update the Community Reinvestment Act (CRA). Among the goals of the memo is to ensure the CRA is modernized to take into account how the offering of financial services has changed since the law was enacted – for instance Treasury recommends updating the definition of geographic assessment areas to reflect the changing nature of banking arising from technology. The banking regulators have begun work under their respective hope to develop a plan this year.

Beyond the CRA update, the regulators are working expeditiously to ensure they keep up with technology. The FDIC held a forum on the use of technology in banking and plans to publish their "learnings" from the event over the coming months. Additionally, now that the Senate has confirmed Jelena McWilliams, banks and technology companies will be waiting to see if the FDIC continues its de facto moratorium on industrial loan company (ILC) charters. In her confirmation hearing, McWilliams testified that it is the job of the FDIC to give each ILC application due consideration and, if appropriate, proceed with charter approval. Comptroller Otting has also said the OCC intends to publish its position on a proposed special purpose charter for fintech companies over the summer. Congress also has begun to re-engage legislatively – Rep. McHenry (R-NC) and Sen. Schatz (D-HI) unveiled an updated draft of McHenry's sandbox legislation. The sponsors sought feedback until Memorial Day and will work to update the draft in the coming weeks.

Other

Farm Bill/CFTC Noms

Since House Republicans failed in their efforts last month to pass a partisan Farm Bill, all attention in the short term is now on the Senate and whether they will get a bipartisan product through this summer. There are positive signs from both Chairman Roberts (R-KS) and Ranking Member Stabenow (D-MI) that

they would like to move something the early part of this month (maybe even this week), and with none of the controversial SNAP/food stamp provisions that derailed bipartisan cooperation in the House expected in their product, there's a good chance that they will move a bipartisan bill forward. However, with such a focus on the Farm Bill, there likely will not be clarity on CFTC nominations and a hearing for CFTC Commissioner nominee Dan Berkovitz until after the Agriculture Committee finishes work on the Farm Bill. And the House has teed up a mulligan of hopefully bringing the Farm Bill up again before June 22nd, attempting to take up immigration reform measures in the interim to appease members of the Freedom Caucus (but see complications below).

Immigration

House Republicans are facing an internal fight on immigration reform between those who want to move a bipartisan bill and those who want a more conservative approach (which helped to sink the Farm Bill). Given such a split, House GOP leadership has planned a Republican-only conference this Wednesday to try and find a path forward. Border security and DACA continue to be the main issues that need to be addressed, but it really is anyone's guess as to what, if anything, they can agree to bring to the Floor. While the House works through this, the Senate is showing some signs of bipartisan work but likely won't devote any additional time to the issue until they see something from the lower chamber. Add to all of this is President Trump's continued focus on immigration, specifically his demands for increased border security and funding for his wall (and a veto threat for anything sent to him that doesn't include these priorities), which puts him squarely with House conservatives. But for all of the discussion, unless there is a triggering event, the likely path is no action on an issue both parties can use to fire up their bases for November. One potential event is the threat of a government shutdown if the President doesn't get funding for his wall, but we'll have to wait until the fall to see whether such a threat becomes reality.

NFIP

With hurricane season underway, there has been some indication that the Senate is beginning to realize that the opportunity to reform and pass long-term reauthorization of the National Flood Insurance Program is slipping away. As the clock continues to tick towards the expiration date of July 31st, the most likely scenario is yet another reauthorization. However, with Senate Minority Leader Schumer (D-NY) recently expressing the need to reform and reauthorize the program and staff for McConnell and other Republicans reportedly having more discussions, there's at least some hope for Congress considering longer-term stability for the program.

June Primaries

Eighteen states will hold primaries this month, with no state having a bigger impact on which party will control the House after the mid-term elections than California's primaries tomorrow. Much has been written about California's jungle primary system, but the sheer number of Democratic candidates in several House races in California does present a problem for the party. If Democrats split their votes among the various candidates, the jungle system could result in two Republicans receiving the most votes and moving forward to the general. Pay particular attention to the seven districts in California won by Hillary Clinton and currently held by Republicans (Reps. Denham (10th District), Valdao (21st District), Knight (25th District), Royce (39th District), Walters (45th District), Rohrabacher (48th District) and Issa (49th District)). Of those districts, Issa and Royce are retiring, and Democrats believed that these open

seats in districts where Clinton won were prime pick-up opportunities, but now they face the prospect of being locked out of the general election. Outside of the House election, Californians will also choose a candidate to go up against Sen. Feinstein in the fall, as well as the two candidates who will face off in November for Governor. Other notable elections tomorrow are in Montana with Republicans determining a challenger to Sen. Tester, and Rep. Kristi Noem attempting to win the Republican nod for governor in South Dakota. Later this month, we'll see primaries in New York, Virginia, Colorado, Maryland, and Nevada among others.