

September 4, 2018



Wake Me Up When September Ends

Members of the House return to Washington today to be greeted by a Senate that was in session for a significant part of August. Foregoing the traditional summer break, the Senate worked through appropriations bills and nominations, including confirming positions at the Fed and CFTC. There's still a lot of work to be done this month, especially on the spending bill front as we head towards the end of the fiscal year on September 30th. Along with funding the government, hearings begin today on Supreme Court nominee Brett Kavanaugh. In addition, amid criticism from the President, executives from some of the major tech companies are scheduled to testify in the House and Senate this week on their efforts to prevent foreign intrusion and election meddling. The Senate Banking Committee (SBC) and House Financial Service Committee (HFSC) also will be active this month, with a hearing on implementation of S. 2155, the financial services regulatory reform legislation, planned for next week in SBC and four hearings on the docket for this week in HFSC, including one on GSE reform. All of this and more will occur during a short month (the House is scheduled to be in town for only eleven voting days in September, and the Senate for sixteen) where the Mueller investigation and the August news on Cohen and Manafort linger over Washington and the mid-term elections are just two months from now. We highlight these and other issues below as we preview what we believe will be the focus in Washington for this quick but extremely busy September work period, subject as always to external or unexpected events that could disrupt the schedule.

Appropriations

Up until this point, the appropriations process has been relatively smooth, and both Chambers have made significant progress passing individual bills. The situation will get more complicated this month, as Congress will need to send some conferenced appropriations bills to the President to avoid a shutdown. We understand that House Appropriations Committee Chairman Rodney Frelinghuysen (R-NJ) and Speaker Paul Ryan (R-WI) have a meeting scheduled tomorrow to plan the rest of the process. As things currently stand, the first conferenced "minibus" (Energy & Water, Legislative Branch and Military Construction/Veterans Affairs) could be on the House Floor as soon as this week, but there are still a few outstanding items so this timing is subject to change.

After that, Congress will turn to the four-bill "minibus" passed by the Senate – Financial Services/General Government, Agriculture, Interior and Transportation/HUD). Because of time constraints it does not sound like there will be an official conference process on this package. The ultimate goal is to have both of these "minibus" bills to the President and signed before the end of the fiscal year Sept. 30th deadline. Congress will ultimately need to pass a continuing resolution for whatever bills are not completed by the end of the month. We believe that getting some of these bills across the

finish line helps make the shutdown risk relatively low in September, but it could be much higher after the midterms when contentious riders such as border wall funding will dominate the debate.

Nominations

The Senate finished its final week of the August work session with a flurry of productivity, approving a package of long-stalled nominees, including a number of key financial regulators, ahead of the Labor Day recess. Notable confirmations included Dawn Stump (R) and Dan Berkovitz (D) for CFTC commissioner roles and Richard Clarida (R) to serve as Vice Chair of the Federal Reserve Board. Though several regulatory vacancies remain, this spate of confirmations marks some of the most significant progress made to date to finalize the financial regulator leadership teams under the Trump Administration.

Further progress on the nominations front is expected this month as the Senate begins confirmation hearings for Supreme Court nominee Brett Kavanaugh. Following the death of Sen. John McCain (R-AZ), the chamber is split down increasingly narrow lines with Republicans holding 50 seats to Democrats 49 seats (although the Arizona Governor could name a replacement for McCain this week). These narrowed margins place additional pressure on three Democratic Senators who are thought to be swing voters in Kavanaugh's confirmation – Sens. Heidi Heitkamp (D-ND), Joe Donnelly (D-IN), and Joe Manchin (D-WV). Though all three have stated publicly that they are reserving judgment on Kavanaugh until after his appearance before the Senate Judiciary Committee, each voted for the previous Trump Supreme Court nominee, Neil Gorsuch.

The Senate is also poised to confirm SEC Commissioner nominee Elad Roisman (R) this week. Roisman will move independently of a Democratic SEC Commissioner nominee (yet to be named but former SEC enforcement lawyer Allison Lee is the reported frontrunner) to replace outgoing SEC Commissioner Kara Stein (D). This is likely the result of a deal struck with Senate Democratic leadership requiring the eventual nominee receive full confirmation before Stein's term expires in December.

Trade/NAFTA

Despite the heat of an August summer in Washington, trade negotiators have been moving full steam ahead. The US and Mexico reached agreement on the parameters of a renegotiated NAFTA, and now Canadian officials are working to see if they too can sign on to a new agreement. While the rhetoric and reports late last week were not promising and President Trump continued to threaten doing a bilateral agreement with just Mexico, talks are scheduled to resume on Wednesday. If Canada agrees to the terms, it could set off a series of events culminating in an up or down vote in Congress in 2019 under the Trade Promotion Authority, also known as "fast track." Whether Canada joins or not, the Administration is intent on moving forward with a renegotiated deal. On Friday, US Trade Representative Robert Lighthizer stated, "Today, the President notified Congress of his intent to sign a trade agreement with Mexico – and Canada, if it is willing – 90 days from now." However, if terms with Canada cannot be reached, the Administration will have difficulty selling that a bilateral agreement with Mexico falls within its notification to renegotiate NAFTA and thus should be granted "fast track" status, particularly if Democrats make significant gains in the midterm elections. Also, with the current slim majority in the Senate, any Republican opposition could be perilous to a bilateral deal. Sen. Pat Toomey (R-PA) has already said publicly that to use "fast track" the Administration also must reach agreement with Canada.

SBC/HFSC Schedules

The House Financial Services Committee will start the month of September with a heavy workload, teeing up a series of hearings addressing housing finance reform, terrorist financing, and financial innovation. HFSC is also expected to invite Federal Housing Finance Administration (FHFA) Director Mel Watt to appear before the committee, possibly along with Fannie Mae CEO Timothy Mayopolous, later this month. An FHFA employee has accused Watt of sexual harassment, and Mayopolous has faced criticism and rebukes from the FHFA Inspector General for not fully disclosing a personal romantic relationship and potential conflicts of interest.

This week, the Senate Banking Committee will continue its ongoing joint hearing series with the Senate Foreign Relations Committee related to U.S.-Russia sanctions. Other expected SBC activity this month includes hearings with regulators regarding the implementation of S. 2155, on implementation of recently enacted CFIUS reforms and one focused on financial technology and innovation.

Other

Farm Bill

Senate Majority Leader Mitch McConnell (R-KY) recently said he hopes to have a Farm Bill conference report in September before its expiration at the end of the month. However, the main sticking point for agreement continues to be changes to the Supplemental Nutrition Assistance Program (SNAP) – the House version would place work requirements on recipients while the Senate bill does not contain such requirements. The official conference is scheduled to begin tomorrow, but with the limited September legislative calendar, reaching an agreement on these contentious provisions before the program lapses seems unlikely potentially teeing up a short-term extension into the lame duck.

Tax Cut 2.0

At the end of July, House Ways and Means Chairman Kevin Brady (R-TX) released a framework for “Tax Reform 2.0” in an effort to build on the *Tax Cut and Jobs Act* passed in December 2017. The framework had three main planks for members to consider: making the individual tax cuts permanent; changing education and retirement accounts to promote family savings; and spurring new business innovation. Ways and Means has held listening sessions on the framework throughout August, and our understanding is that they plan to pass a package of bills consistent with the framework out of Committee in September with the ultimate goal of passing the House this year. These themes appear to be part of Republican messaging going into the midterm elections, especially since such a package has no chance of passing the Senate this Congress. But the White House seems to support these themes as well, with the announcement of an Executive Order that will direct the Department of Labor to move forward on ways to make it easier for small businesses to use multiple employer plans (MEPs) and also be a signal that the Trump Administration supports the bipartisan Hatch/Wyden Retirement Enhancement and Savings Act, which, among various provisions, also would establish more flexible MEPs.

FinTech Crypto Roundtable

Rep. Warren Davidson (R-OH) will host a roundtable on September 25th entitled, "Legislating Certainty for Cryptocurrencies." We understand that he plans to share an ICO framework draft bill with participants prior to the roundtable, which will be one of the main topics of conversation. Other potential topics include clarifying the role of regulators, consumer protection issues, national security concerns, and ways to cultivate an environment for businesses to raise capital. Panels will be made up of Members of HFSC and the House Blockchain Caucus, industry representatives and think tanks.

Community Reinvestment Act (CRA)

On August 28th, the Office of the Comptroller of the Currency (OCC) released an Advanced Notice of Proposed Rulemaking (ANPR) seeking comment on modernizing the Community Reinvestment Act (CRA). Modernizing CRA has consistently been listed as one of Comptroller Joseph Otting's priorities throughout 2018. The comment period will be open for 75 days after publication in the Federal Register. As a reminder, the Treasury Department released a memo on modernizing CRA in April 2018, which included many of the questions listed below from the ANPR. Treasury Secretary Steven Mnuchin also issued a statement supporting OCC's efforts. In the statement, Mnuchin said Treasury believes regulatory and performance expectations under CRA have not kept pace with changes in interstate and mobile banking, and that as banks serve their communities their activity should be subject to efficient, effective and predictable regulation. The OCC posed several questions as part of the ANPR, including how to improve regulations relating to:

- increasing lending and services to people and in areas that need it most, including in LMI areas;
- clarifying and expanding the types of activities eligible for CRA consideration;
- revisiting how assessment areas are defined and used;
- establishing metric-based thresholds for CRA ratings;
- making bank CRA performance more transparent;
- improving the timeliness of regulatory decisions related to CRA; and
- reducing the cost and burden related to evaluating performance under the CRA.

Political

The long primary season finally ends this month with the last four states wrapping things up just in time for a two-month sprint to the midterms. Today, voters in Massachusetts will go to the polls with Democrats focused on whether Rep. Michael Capuano can fend off a strong challenge from his left by Boston City Council member Ayanna Pressley. With everyone looking for the next Ocasio-Cortez and an endorsement from the Boston Globe, Pressley has received a lot of national attention, but there isn't that much daylight between her and Capuano on the issues, so this race likely will come down to whether voters want a new voice to represent them in Washington. Reps. Stephen Lynch and Richard Neal also face primary challenges in Massachusetts today, but both are expected to win, although nothing can be taken for granted this election season. Later this week on Thursday, Sen. Tom Carper (D) is up for reelection in Delaware, where he faces progressive newcomer candidate Kerri Harris (who has the support from Working Families and the aforementioned Ocasio-Cortez). Harris has ramped up her efforts and has impressed many in her first campaign, forcing Carper to call in support from former VP

Joe Biden (rare in a primary). While *Stranger Things* have impacted elections in Delaware in the past, we expect Carper to be the Democratic nominee.

After this week, the last two primaries are in New Hampshire (11th) and Rhode Island (12th), with the main contested races being in New Hampshire to fill the House seat of retiring Rep. Carol Shea-Porter (D), and the gubernatorial election in Rhode Island. Also this month, New York voters will go back to the polls on the 13th to choose nominees for Governor and Attorney General.

After these primaries, complete attention will be on the mid-term elections on November 6th. With all signs continuing to point to Democrats making strong inroads in the House and Republicans retaining a slim majority in the Senate, there are still a number of unknown factors that could influence the midterms. At the very top is a potential final report from Robert Mueller, with many believing the closer we get to November, the more unlikely a report is to be released so that it isn't seen as an effort to influence the elections (such as the infamous Comey letter). Regardless, anything that emanates from this investigation over the next few months will be scrutinized, debated, tweeted about, etc., and used one way or another in fall campaigns. Outside of Mueller and Trump himself, other topics that will play a role include trade, government spending (again, we don't believe there will be a shutdown at the end of the month, but it's specter is there), the economy (and an expected rate hike), etc., etc., etc.

One other issue to note regarding the House is the recent federal appeals court ruling in North Carolina, which could unexpectedly provide Democrats with the potential for additional seats in a state where they had focused on only a few races. With an appeal to the Supreme Court on tap, anything could happen, especially given the fact that the Supreme Court could determine what to do before Kavanaugh is confirmed. While it now sounds like the districts won't be reconsidered in time for the midterms, the decision in NC is worth paying attention to for it's potential impact on this year's elections as well as what it means for redistricting and gerrymandering going forward.

Have an awesome September!