February 4, 2019

It's Too Late to Stop Now

Getting the 116th Going

With the federal government fully functioning for the moment, Congress appears to be pointing towards "go." But even though last week's polar vortex has retreated, we still face the productivity-freezing prospect that a week from Friday portions of the federal government could again be forced to close their doors. As work continues to avoid that scenario, we will see the President give his rescheduled State of the Union speech tomorrow night, and Congress will be in town for a fairly limited February run. With a recess week scheduled after Presidents' Day, there aren't many days available for hearings, at least in the House. While the Senate will be in for most of the month except Presidents' Day week, we still expect the majority of time on the Floor to be devoted to judicial nominees, with still some discussion of limiting the debate on those efforts. We highlight these and other issues below as we preview what we believe will be the focus in Washington in the shortest month of the year, subject as always to external or unexpected events that could disrupt the schedule.

Government Funding/Border Wall Debate

Congress has less than two weeks to come to agreement on a funding deal before another lapse in appropriations, and the parties do not seem to be any closer to a deal now than they were before the holidays. President Trump and Speaker Nancy Pelosi (D-CA) are still firmly on opposite sides of the border wall debate, and without one of them backing down it is unlikely a deal will be reached. Up until this point, Trump has been able to hold Republicans in line with him, and Speaker Pelosi has been able to hold Democrats. If support from either caucus erodes, it is possible a deal could come together.

House Appropriations Committee Chairwoman Nita Lowey (D-NY), a key Member of the Conference Committee debating the Homeland Security appropriations bill, has said that she would like the Homeland bill to be completed by February 8th, giving both Chambers plenty of time to vote on that bill and the other six remaining appropriations bills, but this seems increasingly unlikely. The Administration has been relatively absent from negotiations on the Hill, which makes us think Trump declaring some sort of national emergency on the border is a likely way out of this mess. Some Senate Republicans are still very wary of the precedent this sets however.

Following completion of the border security debate, either in the form of a conferenced Homeland Security bill or a declaration of national emergency, both Chambers will likely take up the remaining appropriations bills that were previously agreed upon by Senate Appropriations Committee Chairman Richard Shelby (R-AL) and Ranking Member Patrick Leahy (D-VT). While it seems unlikely that many policy riders will be included with these bills, it is often the case that other priorities get attached right before packages move. Look for this process to start up again soon, as Chairwoman Lowey would like for the House Appropriations Committee to begin hearings on FY20 in April.

Nominations/Post-Cloture Debate

We expect that Senate Majority Leader Mitch McConnell (R-KY) will continue to spend the majority of Senate Floor time on Trump Administration nominations during the first quarter, with a continued focus on judicial nominees. One caveat to this is FHFA nominee Mark Calabria, who we expect will be prioritized and swiftly reported out of the Senate Banking Committee and receive a vote on the Floor. In addition, we do not expect that the Administration will re-nominate either of the previous candidates for the Federal Reserve Board of Governors. The White House has already made public that they have been interviewing candidates to fill these roles – but the process could take some time. We continue to hear that Allison Lee, a former counsel for Commissioner Stein, will be the nominee to fill the vacant Democratic seat at the SEC. She still has not yet been formally nominated, but the Administration continues to signal that she will be.

More broadly, Senators have been debating whether to change the rules on post-cloture debate time for certain nominees. A change in the debate time would be limited to executive branch nominations and federal judges (excluding SCOTUS and Circuit Court judges). Such a change would likely allow Leader McConnell to spend more time processing nominees that are not judges, and open up more time on the Senate Floor for consideration of actual legislation. One proposal that has received the most attention and discussion would set two hours of post-cloture debate for all sub-cabinet level nominees. While no decision has formally been made, we believe some in the Senate Republican caucus will continue to focus on this, and the Administration could begin to put pressure on Leader McConnell to make such a rules change. Due to this mounting pressure, a rule change seems likely by the end of the first quarter.

Other key nominees pending consideration in the Senate include Heath Tarbert, who has been nominated to be Chairman of the CFTC (which goes through the Senate Agriculture Committee), and Bimal Patel, who has been nominated to be assistant secretary of the Treasury for financial institutions (which goes through Senate Banking).

Senate Banking Committee (SBC)

In January, Chairman Mike Crapo (R-ID) outlined his key priorities for the upcoming Congress. While he identified several issues covering the waterfront of financial services, we believe housing finance reform (discussed in depth below), privacy/data security, capital formation, BSA/AML, and reauthorizations will see the most activity. In the near term, housing finance reform and privacy will be the two issues that receive the most attention at Senate Banking. It is our expectation that housing finance reform will receive negotiating and legislative drafting attention, but given SBC's extensive history of hearings on this topic, we expect hearing activity on this issue to be relatively light. Privacy on the other hand sets up for a thorough hearing process to lay the foundation for legislative activity. While many stakeholders are often focused on the security or breach side of data, our expectation is that the Chairman will approach this issue in a more comprehensive manner looking at collection, sharing and usage of data.

The Committee also needs to begin to tackle three reauthorizations within its jurisdiction: TRIA, flood insurance, and the Export-Import Bank. We expect SBC to begin outreach to stakeholders in February and March, and then begin the hearing process on Ex-Im and TRIA to kick-start reauthorization (flood insurance reauthorization has received considerable Committee hearing attention already)

In February, we expect the following potential hearings – the confirmation hearing mentioned above for Calabria, along with Patel, Rodney Hood (National Credit Union Association (NCUA) Commissioner), and Todd Harper (NCUA Commissioner); Humphrey/Hawkins with Federal Reserve Chairman Jay Powell and a CFPB Semi-Annual Hearing with CFPB Director Kathy Kraninger

House Financial Services Committee (HFSC)

After formally organizing last week, we likely will see the first official HFSC hearings this month. HFSC Dems also are holding a retreat this Wednesday (Feb. 6th), which could be followed by consideration of the committee oversight plan the week of February 11th. The first full HFSC hearing is expected to be the widely reported one regarding credit bureaus, potentially on February 26th. Fed Chair Powell is also expected to appear in front of HFSC that week for his Humphrey-Hawkins hearing in the House. A legislative hearing on marijuana banking is possible the week of February 11th in the Consumer Protection and Financial Institutions Subcommittee. Other potential upcoming full committee hearings involve an appearance by SEC Chairman Jay Clayton and one focused on the CFPB with Director Kraninger (and/or former Director (and current acting White House Chief of Staff) Mick Mulvaney). There could be additional subcommittee hearings this month as well, and we also could see the official creation of HFSC's FinTech task force.

Housing Finance Reform

Housing finance issues likely will see increased regulatory and congressional attention over the first half of 2019. Issues to be debated include comprehensive reform, single security initiative, credit scoring models, and the confirmation and first few months of a new FHFA director.

Congress

As noted earlier, SBC will be front and center for several of the most high-profile issues. Chairman Crapo released a housing finance reform outline last week, which, while not novel, kick-starts discussions on the Hill and lays out a credible marker for discussion. The prospects of achieving comprehensive reform will require bipartisanship, which may be complicated by higher political aspirations by some Democrats on SBC. Additionally, the effort will need to work well with the Trump Administration's plans (discussed below). We believe that the Chairman and the Administration will largely be on the same page. Bipartisan action, on the other hand, is complicated with the loss or retirement of key voices in previous housing finance debates. Oversight in the Senate will remain a priority for both Republicans and Democrats. The Committee is likely to pick up where it tried to start last year on oversight of Fannie Mae and Freddie Mac pilot programs – Members on both sides of the aisle have expressed some concern with the use of these programs. Democrats will also aggressively evaluate and question Otting/Calabria on any administrative action.

In the House, the retirement of Chairman Jeb Hensarling (R-TX) and rise of Chair Waters place housing finance plans in a bit of flux. In some ways, the environment for reform may be easier as the strong conservative voice (which has derailed plans before) is no longer present. As a result, it may be easier to find a moderate sweet spot with HFSC Ranking Member Patrick McHenry (R-NC). Chair Waters has identified housing as a top priority of her chairmanship, yet we believe at least her initial focus will be on affordable housing. We believe that if serious headway is made in the Senate then more robust discussions could develop in the House.

Administration
The Administration is likely to play a pivotal role in housing finance in the near term. For the first time since the start of the Trump presidency, the Administration will have control of the FHFA and its significant regulatory and conservatorship authorities, which may lead to some reform. In January, there was some news made when FHFA Acting Director Joseph Otting told staff to expect administrative action on reform in early 2019. Based on our conversations, we expect the Administration to roll out a public plan this week. We believe this could be a multi-step roll out. First, it is our expectation that housing finance will be included in the President's State of the Union address tomorrow. This is likely to be only high level and call on Congress to act and for relevant agencies to study or risk more aggressive administrative action. Second, based on previous Administration initiatives, we believe an Executive Order or Presidential Memorandum will be released this week, which would outline key principles for reform, direct Treasury and HUD to study administrative options, and finally to work with Congress. We view these public steps as positive for the chances of reform. The Trump Administration is a key player from a technical and public pressure standpoint. Further, the Administration has the ultimate stick – the ability to act unilaterally if Congress can't reach consensus.

Retirement Savings

Retirement security is an important policy priority for the House Ways and Means and Senate Finance Committees and given bipartisan interest this could be the year the stars align to finally pass legislation. Senate Finance Chairman Chuck Grassley (R-IA) and Ranking Member Ron Wyden (D-OR) still plan to move a RESA package (e.g., open MEPs and lifetime income safe harbor), similar to the bipartisan Retirement Enhancement and Savings Act considered last Congress, before moving to a more comprehensive retirement security bill.

House Ways and Means Chair Richard Neal (D-MA) is committed to strengthening retirement security and expanding access and enrollment. This week (Wednesday, February 6th) he will hold the first of potentially several hearings focused on this issue. We also believe Neal will reintroduce bills he submitted in the 115th Congress, such as his Retirement Plan Simplification Act, which would modify the auto enrollment safe harbor legislation, and his Automatic Retirement Plan Act to require certain employers to maintain auto contribution plans for their employees. Modest updates to the bills are likely such as providing the ability for employees to opt to a lower percentage of contributions from the starting point of 6% and lowering the age requirement of covered employees. Republicans will continue their opposition to mandates for small businesses, meaning they will likely endorse "auto-escalation" over Neal's "auto-enrollment."

Sens. Rob Portman (R-OH) and Ben Cardin (D-MD) continue to lead on retirement policy and will reintroduce legislation to provide improved coverage in the small employer market and for part-time workers. A few changes related to lifetime income disclosure and portability, adjusting the age requirement for the Saver's Credit and expanding tax credits to SIMPLE IRAs are possible before the bill is reintroduced. Simultaneously, Treasury is working on its study per the President's request on modernizing the RMD (required minimum distribution), which was also in the Portman-Cardin bill.

The White House and the Senate would support including RESA in the next government funding bill; however, Chairman Neal may seek some changes before that happens. We expect a legitimate push for RESA to be on the table over the next few weeks.

Trade

China
January ended with a flurry of trade negotiations between the US and China as both sides raced to reach a deal before the March 1st deadline when higher tariffs on some Chinese goods will go into effect. At the conclusion of the meetings, President Trump met with Chinese Vice Premier Liu and held a press conference (January 31, 2019) where both sides said substantial progress was made during their two days of meetings. President Trump announced US Trade Representative Robert Lighthizer and Treasury Secretary Steven Mnuchin will be heading to China in early February to continue discussions. President Trump also said he will be meeting with President Xi at least once and possibly twice. Ambassador Lighthizer said the negotiators discussed many of the structural issues facing the two countries, "and the protection of U.S. intellectual property, stopping forced technology transfer, intellectual property protection, agriculture and services issues, and enforcement, enforcement, enforcement." Vice Premier Liu also announced China would purchase five million tons of soybeans per day starting immediately.

USMCA
On January 29, 2019, Ambassador Lighthizer submitted changes to existing law the US would have to make to come into compliance with the agreement between the US, Mexico and Canada (USMCA). Among the list are changes to "rules of origin" for when autos can be imported duty-free and changes to tariffs on certain goods and tariff-rate-quotas for others, including for U.S. agricultural goods to gain additional access to Canada for dairy, poultry and eggs. The notification is a first step in getting the USMCA approved by Congress, but it, like any trade deal, faces a long and precarious road ahead with potential pitfalls from both sides of the political spectrum. For example, a bipartisan group of representatives said that Congress should not ratify USMCA without resolution to steel and aluminum tariffs, which shows that these tariffs aren't popular with Congress and that the path forward on USMCA may need to include a compromise on Section 232 tariffs. Further, our conversations with leading conservative voices in the Senate indicate some distance between Republicans and the Administration.

Flood Insurance

The National Flood Insurance Program (NFIP) is currently authorized through May 31, 2019. It has seen a series of short-term reauthorizations over the last two years due to the inability of lawmakers to agree to a package of reforms. Both SBC (staff level) and HFSC (Member and staff level) have met to start initial conversations surrounding priorities. In the Senate, the key players in the debate remain largely unchanged, and the political and regional dynamics also remain the same. In the House, with Democrats now controlling the pen for reauthorization, and former Chair Hensarling no longer around to push for more substantial reforms to the program, we view the odds of a longer-term reauthorization with minimum reforms as increasingly likely.

Private flood insurance continues to be a point of emphasis in the reauthorization debate. There are several coastal and Democratic Members who have expressed opposition to the expansion of the private flood marketplace. However, some action has unfolded at the regulatory agencies. In January, the federal banking agencies, the NCUA, and the Farm Credit Administration started the roll out of a final rule implementing the Biggert-Waters Act's mandatory purchase requirement. While industry is still evaluating the rulemaking, the proposal appears to be at least an improvement to the 2013 and 2016 proposed rules. As a result, we anticipate there will be some benefit to the private flood marketplace. It will be important to monitor what the private flood rulemaking does to the debate surrounding private flood legislation. We believe that it does not negate the need, or resulting congressional push, for further legislative enhancement.

Agriculture Committees and CEA

There have been discussions between staff for the Senate and House Agriculture Committees about moving Commodity Exchange Act (CEA) reauthorization legislation early this year. Last Congress, the House moved legislation early in 2017, but it was mainly on a partisan vote because of some controversial provisions, and the Senate never took it up. This year, Senate Ag Chair Roberts (R-KS) has indicated interest in moving a relatively clean reauthorization (without problematic policy riders), which likely could gain the support of Ranking Member Debbie Stabenow (D-MI). While the House Agriculture Committee is still being organized, this approach is likely one that also would gain the support of Chair Collin Peterson (D-MN). Aside from this effort, we expect that Chair Peterson will delegate a significant amount of committee work to his subcommittees, which means work regarding the CFTC will be handled by the Commodity Exchanges, Energy and Credit Subcommittee in House Ag, which likely will be chaired by Rep. David Scott (D-GA).