

June 3, 2019



## **June Still Comes Around Every Year**

After a needed Memorial Day recess, Members return to Washington today to begin an eight-week summer slog, broken up only by a week back home over the 4<sup>th</sup> of July. We expect the annual appropriations debate to be front and center in June as well as final approval of disaster aid funding and House consideration of DACA legislation. Even though the release of the Mueller report is in the rearview window, the issues raised by this investigation – chief among them the public comments last week from Mueller himself – will continue to reverberate within the Democratic party in June, with the impeachment drumbeat likely to continue to grow louder. These voices could be amplified later this month on the stages of the Adrienne Arsht Center in Miami for the first Democratic debate on June 26<sup>th</sup> and 27<sup>th</sup>. We highlight these and other issues below as we briefly preview what we believe will be the focus in Washington in June, subject as always to external or unexpected events that could disrupt the schedule.

### **Expected Senate Banking Committee Activity**

June is shaping up to set the outlook for the rest of the year in the Senate Banking Committee (SBC). Three priority issues for Chairman Crapo (R-ID) are awaiting further action after foundational activity earlier this year. First, June is a critical month for legislative activity on housing finance reform. Chairman Crapo has indicated he is working behind the scenes with Democrats to try and build a bipartisan working group. This engagement has been going on since SBC held its first hearings on the topic in March. We believe there is a 3-6 month window for legislative activity to show real progress before full attention would pivot to unilateral administrative action. To demonstrate some bipartisan progress, Crapo will need to hold follow-up hearings or release draft text built off of his reform outline from January (and see below for more on housing finance reform generally). The second priority issue for the Committee is privacy (also discussed in detail later). Crapo and Ranking Member Brown (D-OH) have continued to forge a bipartisan path, and it is our expectation SBC will hold a second privacy hearing in June. Witnesses will likely represent industry after a May “experts” panel. We believe close attention should be paid to whether the industry representatives are from non-traditional financial services companies (e.g., data brokers, Facebook, etc.). Third, and finally, BSA/AML reform (also see more detail below) has long been identified as a bipartisan legislative target. The House is further along with consideration of legislative text, but the Senate has stepped up its pace and held a hearing with law enforcement last month to drill down on beneficial ownership policy. It is our expectation there will be a second beneficial ownership hearing in June, which will be comprised of industry witnesses.

### **Nominations**

The Senate Banking Committee helped Senate Majority Leader McConnell (R-KY) successfully clear a number of key financial nominees in May, including three Export-Import Bank (Ex-Im) nominees (Ex-Im’s board now has quorum for the first time since July 2015). This week, on June 5<sup>th</sup>, SBC will consider

Allison Lee to fill the vacant Democratic slot as a Securities and Exchange Commission (SEC) commissioner. Additionally, the Committee will consider Paul Shmotolokha to be Vice-Chairman of the Ex-Im Bank. Lee's progression has been stalled for some time due to background clearance challenges. However, it is our expectation that once she moves out of Committee (likely in June), she could see Senate Floor action and confirmation by the August recess given the Senate nominees rules change.

Two key nominees awaiting Senate confirmation include Bimal Patel to be Assistant Secretary of Financial Institutions at Treasury and the vacant Democratic slot at the Federal Deposit Insurance Commission (FDIC). Patel's nomination is of enhanced importance given the announcement that Craig Philips will depart Treasury in June. Once confirmed, Patel will be the only confirmed person in Treasury's Domestic Finance office. On the FDIC front, the White House and Senate Democrats continue to be at an impasse on the selection of a Democrat to be a member of the FDIC board.

This week, the Senate is expected to confirm Heath Tarbert to be the next Chairman of the Commodity Futures Trading Commission (CFTC). Our expectation is that Tarbert won't take the reigns until early July due to an exit agreement with current CFTC Chair Giancarlo.

*Nominees Fun Fact: According to Leader McConnell, since the rules change in April, the Senate has confirmed 45 nominees in 21 days, while before it took 48 days to confirm 23 nominees.*

### **Expected House Financial Services Committee (HFSC) Activity**

Shortly after leaving town ahead of Memorial Day, HFSC Chair Waters (D-CA) released the anticipated schedule for her committee this month.

- With the House only in session for a few days this week, HFSC's activity is limited to two hearings tomorrow. First off, the full HFSC will look at reauthorization of the Ex-Im Bank. This follows on the heels of confirmation by the Senate of three new Ex-Im board members early last month. The Ex-Im Bank must be renewed by September 30<sup>th</sup>, and while the Administration supports these efforts, this hearing is likely to highlight calls for reform as well as calls from some Republicans for it to be dissolved. Following this hearing, the Subcommittee on Consumer Protection and Financial Institutions will look at whether there are any systemic risk concerns with leveraged lending.
- Next week, the HFSC Oversight and Investigations Subcommittee will look at student loan servicing, and the full committee will convene for a mark-up with the aforementioned Ex-Im reauthorization and beneficial ownership legislation likely on the docket, among others.
- The week of June 17<sup>th</sup>, the HFSC National Security Subcommittee will look at the impact of trade and tax policies on the economy, the Capital Markets Subcommittee will consider proposals to strengthen enforcement against securities law violators, the full committee will continue to examine corporate diversity with a hearing on board diversity, and the Subcommittee on Housing and Insurance will review the appraisal industry.
- The last week of the month, the full committee will examine the recent CFPB debt collection rule, the Diversity and Inclusion Subcommittee will hold a hearing on asset manager diversity and we will see the first hearings by the newly-created HFSC FinTech task forces – the general FinTech Task Force will look at regulation in this area and the Artificial Intelligence Task Force will look at perspectives on AI.

### **Other Expected Activity in the House**

After hopefully finally passing disaster relief legislation (expected early this week), as discussed previously, the House next week will focus on bringing spending bills to the Floor, with the goal of getting all twelve fiscal 2020 spending bills done by the end of the month. Even with warnings of late-night votes, it's an ambitious schedule, so this process very well could slip into July. Outside of appropriations, the House this month will consider the American Dream and Promise Act (to address DACA), potentially legislation regarding a national minimum wage and the cannabis banking bill that passed HFSC earlier this year. One other noteworthy plan in the House this summer is that the Agriculture Committee hopes to move reauthorization of the Commodity Futures Trading Commission (CFTC) before the August recess.

### **Appropriations/Debt Ceiling**

Before House Floor action begins, the full House Appropriations Committee will mark up the Agriculture (USDA-FDA) and Transportation-HUD measures, leaving just Financial Services and General Government (FSGG) and Homeland Security still awaiting subcommittee markups, with FSGG scheduled for a mark-up tonight and Homeland Security on Wednesday. On the other side of the Hill, Senate Appropriations Committee Chairman Shelby (R-AL) released the committee's schedule for the month beginning with two closed meetings to review budget requests for Nuclear Modernization Programs and Defense Innovation and Research.

Always looming is the September 30<sup>th</sup> date, in which a funding agreement must be reached to avoid another government shutdown. Congress also will need to raise the debt ceiling around the same time and in a hearing last month, Treasury Secretary Mnuchin pegged late summer as the deadline, urging Congress to act as soon as possible.

### **Regulatory Agenda**

Financial regulators have several items still in the pipeline that could be finalized over the coming months. First, FDIC Chair McWilliams has said that the prudential regulators will put out a proposed rule to reform the Community Reinvestment Act as soon as this summer. This is a positive signal given OCC Comptroller Otting has already stated CRA reform is his number one priority. The FDIC and the Federal Reserve have been slow to move forward in the interagency rulemaking process. It is our understanding that the Federal Reserve's renewed interest and participation has helped to expedite the process. The Federal Reserve Board unveiled its long-awaited proposal to revise the Volcker Rule last week and we expect the issue to be debated over the summer, while the regulators take input on the plan.

As we predicted, SEC Chairman Clayton has scheduled a vote this week to adopt the investment advice reform proposal – Regulation Best Interest (Reg BI). Democrats continue to show concern that the rule still does not go far enough, although Chairman Clayton has displayed confidence that the rule is adequate as is. During the meeting, SEC Commissioners also will vote on new rules that would require registered investment advisers and brokers to provide a brief customer relationship summary (Form CRS) to retail investors.

### **Bank Secrecy Act/Anti-Money Laundering**

As indicated above, BSA/AML legislation continues to be a hot topic in both the House and Senate. The collection of beneficial ownership information has been a sticking point in the House modernization

effort where HFSC Ranking Member McHenry (R-NC) has repeatedly requested additional information and data from the Treasury Department before agreeing to support the modernization effort. McHenry is still waiting on the information and at a recent hearing with Treasury Secretary Mnuchin raised the lack of response by saying “The director of FinCEN has yet to provide any data to justify the position to have a massive new collection of the ownership data of small businesses across America. I raise it to you because I know you can and will be responsive.” Next steps for the legislation seem to be for the Senate to develop draft legislation once sufficient questions have been answered on beneficial ownership, likely over the summer. It is our view that beneficial ownership legislation still has significant hurdles to clear to be signed into law – primarily opposition from the small business community.

### **Privacy**

Privacy continues to receive attention from multiple committees in the House and Senate. In May, the Senate Commerce Committee, House Energy and Commerce Committee, Senate Banking Committee, and Senate Judiciary Committee each held hearings examining some aspect of privacy and data security policy. May’s activity continued to highlight some of the key features being debated by Republicans and Democrats including the scope of preemption, private rights of action and the scope of any new framework. No surprise that the California Consumer Privacy Act and General Directive on Privacy Rights (EU) continue to get considerable attention. Comprehensive privacy legislation still faces an uphill climb due to policy complexity, congressional jurisdictional complexities and a shrinking legislative calendar.

As noted above, Chairman Crapo and Ranking Member Brown are expected to continue their examination of privacy with at least one June hearing. In May, Crapo and Brown sent an oversight letter to Facebook asking a number of questions scoped around the Committee’s core jurisdictional statutes – the Fair Credit Reporting Act, Gramm-Leach-Bliley Act and third party service provider authorities. Based on questions at May’s Committee hearing, the questions contained in the Facebook letter, and conversations with staff, our view is that Crapo and Brown are focused on the growing role of data brokers - specifically how third parties share a growing amount of information that is being used by financial institutions providing services to customers.

We, however, still believe that it is still premature to see any legislation emerge in June in the Senate Banking Committee, but it is clear Crapo and Brown will continue to pursue their bipartisan interest in this area.

### **Retirement Savings**

The House and Senate will continue their work on a retirement savings package focused on reforming 401(k) plans provisions within ERISA, and there is great optimism from both Chambers that a bill will reach the President’s desk within the year. Last month, the House passed H.R. 1994, the SECURE Act, with overwhelming bipartisan support on a 417 to 3 vote. The bill, introduced by a bipartisan group of House Ways and Means Committee members, including both Chairman Neal (D-MA) and Ranking Member Brady (R-TX), will head to the Senate where a similar version of the bill, known as the Retirement Enhancement and Savings Act (RESA), has yet to be voted out of the Senate Finance Committee. Committee Chairman Grassley (R-IA) and Ranking Member Wyden (D-OR), sponsors of the Senate’s RESA bill, recently indicated that they want the Senate to quickly pick up the House bill, understanding that taking up the two bills separately would be an inefficient use of the Senate’s limited floor time.

Looking ahead, after Congress approves the SECURE Act, it is very likely attention will turn to the next phase of retirement security legislation, including a bill recently introduced by Senate Finance Committee members Portman (R-OH) and Cardin (D-MD). Their bill would boost incentives to small businesses to offer 401(k)s and expand eligibility to part-time workers.

### **Housing Finance Reform**

Washington continues to hold its breath waiting for Treasury and Housing and Urban Development (HUD) to release their plans for housing finance reform, expected sometime in July. Craig Phillips' impending departure from Treasury over the summer complicates housing reform efforts and suggests that the Federal Housing Finance Agency (FHFA) is in the driver's seat now more than ever. At the Consumer Financial Protection Bureau (CFPB), Director Kathy Kraninger faces the fast-approaching deadline of the "GSE patch" to the Qualified Mortgage rule in January 2021 or when the GSEs exit conservatorship. The CFPB completed its statutorily mandated assessment of the ATR/QM rule this January, and the report's analysis lays the foundation for the eventual removal of the patch. This will be a key administrative tool to shrink Fannie and Freddie's portfolio, particularly the 30 percent that went to homebuyers exceeding the 43 percent debt-to-income ratio set by the CFPB's 2013 QM rule. Since his confirmation to FHFA, Director Mark Calabria has given several important speeches and interviews that have built momentum for GSE reform in Washington. With his term ending in 2024, Calabria has a longer runway to work with, and as a result will likely provide plenty of transition time for any major reforms so as not to disrupt the mortgage markets going into an election year. Once Treasury and HUD release their plans over the summer, FHFA and Treasury are likely to engage on the Senior Preferred Stock Purchase Agreements in the late fall or early in 2020, setting the stage for Fannie and Freddie to begin raising capital.

### **International**

#### *Trade/USMCA*

On May 30<sup>th</sup>, US Trade Representative Robert Lighthizer sent a draft statement of administrative action to congressional leaders, which allows the Trump Administration to send a trade deal to Congress within 30 days. This move has angered House Speaker Pelosi (D-CA) and accelerates the timeline for USMCA to be considered for ratification despite concerns by House Democrats over the enforcement of labor, drug and environmental standards. Both Canada and Mexico took similar steps to begin formal consideration of the trade deal in their respective legislatures ahead of Vice President Mike Pence's visit to Ottawa last week.

#### *Tariffs*

After the US struck a deal on May 17<sup>th</sup> to lift tariffs on steel and aluminum imports from Canada and Mexico, the Trump Administration announced new tariffs last week on Mexico in an attempt to force the country to crack down on what the US sees as an immigration crisis at the border. Under the International Emergency Economic Powers Act, the US will be imposing escalating tariffs on all goods coming from Mexico, starting at 5 percent on June 10<sup>th</sup> and up to 25 percent in October. Notably, Senate Finance Chair Grassley (R-IA) criticized the move, warning that it could derail the trade deal. On June 1<sup>st</sup>, the Trump Administration's 25 percent tariffs on \$200 billion of Chinese imports arriving at US ports went into effect, intensifying the trade war between the two countries and drawing retaliatory tariffs on \$60 billion of US products from Beijing. China has also announced that it is establishing a

blacklist of foreign companies and threatened to withhold sales of rare earths to the US, of which roughly 80 percent is imported from China.

### **National Flood Insurance Program (NFIP)**

The NFIP received a temporary reprieve last week, just one day before it was set to expire and after two previous attempts were halted by House Republicans last month. The House approved a last-minute two-week extension under unanimous consent (the Senate had already approved it), authorizing the program until June 14<sup>th</sup>. The House is expected to vote on a \$19 billion disaster aid package while in session this week. The package includes language that would reauthorize the NFIP until September 30<sup>th</sup>, a measure the Senate passed last month. Looking forward, HFSC Chair Waters and Ranking Member McHenry have committed to seeking a long-term fix before the August recess, and Republican Whip Scalise (R-LA) has suggested a five-year extension could be worked out in the coming months.

### **Democratic Presidential Debates**

Later this month, all 1,124 declared Democratic candidates for President (it's actually 24 as of this writing but just seems like over 1,000) will converge on Miami for not one, but two nights of debates. This is more than three months earlier than the first Democratic presidential debates in 2015 (and over a month earlier than the first Republican presidential debates that year) where there were just five candidates. With the large number of candidates, this debate as well as next month's debate in Detroit, will occur over two nights, with which night a candidate will appear chosen randomly. The Democratic National Committee also recently released new guidelines to try and begin whittling down the large field through new hurdles candidates will have to meet before they can qualify for additional debates this fall. While the debates themselves should be newsworthy, it also will be interesting to see whether President Trump live-tweets the proceedings as he did during the first Democratic debate in 2015. And for those keeping score, there are just eight months from today until the Iowa caucuses on February 3rd. It should be an interesting ride between now and then.