

October 15, 2019



Keep me Walking, October Road

October work periods with both the House and Senate in session for an extended part of the month usually only come around during off-election years - and this month promises to be extra eventful. While we likely won't see many conversations that don't at some point include the word impeachment, Congress will attempt to use the limited oxygen left in the room to continue their best semblance of regular order. At some point over the next few months, Congress and the Administration will have to determine how to move forward with government funding as the current continuing resolution expires the week before Thanksgiving on November 21st. Other large issues still on the table include the US-Mexico-Canada trade agreement (USMCA), additional sanctions related to Turkey, potential consideration of BSA/AML-beneficial ownership legislation and Export-Import Bank reauthorization. We also have the fourth Democratic debate tonight, with twelve candidates expected to appear on stage in Ohio. We highlight these and other issues below as we briefly preview what we believe will be the focus in Washington in October, subject as always to external or unexpected events that could disrupt the schedule.

Impeachment

It has been three weeks since Speaker Pelosi (D-CA) announced the official impeachment inquiry, directing six committees (Intelligence, Judiciary, Oversight, Foreign Affairs, Ways & Means and Financial Services) to "proceed with their investigations under that umbrella of impeachment inquiry." While in some respects this announcement only reaffirmed the work already underway by the six committees, it also propelled the investigation front and center right before Members of Congress returned to their districts for two weeks. In an effort to insulate House Democrats, particularly vulnerable Members, from impeachment blowback, Speaker Pelosi has sought to strictly limit the inquiry to Ukraine while simultaneously advancing a policy agenda addressing popular issues of interest such as drug pricing.

While historically the House Judiciary Committee has taken the lead on impeachment proceedings, Speaker Pelosi has largely handed the investigation over to Chairman Schiff (D-CA) of the House Intelligence Committee. It is also worth noting that while in the past there has been a vote of the full House to initiate an impeachment inquiry, analysis has shown that nothing in the Constitution or House Rules requires such a vote to take place, so we do not expect the Speaker to call for one.

The political implications of the impeachment inquiry are far reaching. Regardless of where one comes down on the issue, it will be used by challengers in House races on both sides. In addition, with many of the most vulnerable Democrats supporting the inquiry, House Democratic leadership is under increased pressure to show that they can also continue to govern. The new Democratic class elected to Congress in 2018 was largely elected through

pledges to get things done and fix a broken Washington. So, while the inquiry calls into question exactly what can get done this year, House Democrats still want to show they can govern and legislate by seeking to advance legislation on drug pricing, election security, surprise billing and potentially USMCA.

As for the ongoing investigations, this week will be an important one to watch with more officials set to be deposed and deadlines for the Administration to turn over documents expiring. The Administration likely will continue to refuse to cooperate as the White House counsel Pat Cipollone wrote in a letter to House leaders on October 8th. At the same time, issues including the President's tax returns are being heard in the Courts and the President's lawyer Giuliani is coming under investigation. While it's impossible to predict how this all will play out, we will continue to analyze how it impacts the outlook for the rest of the year and into 2020.

Expected Senate Banking Committee (SBC) Activity

As the year draws to a close and the window for legislation narrows, SBC has shifted its focus to overseeing regulatory agendas at the agencies as well as taking a closer look at how technology is changing the provision of financial services (such as the Capital One breach and Facebook's Libra). The Committee is set to hear this week from Consumer Financial Protection Bureau (CFPB) Director Kraninger on the Bureau's Semi-Annual report to Congress, and then look at the status of the development of the Consolidated Audit Trail next week. Other workstreams that could potentially end up on the docket include consumer privacy and how financial regulators oversee third-party service providers.

Nominations

The Senate reconvenes this week following a fairly productive September on the nominations front. During the last work period, the Senate voted to confirm the nominations of four key Treasury positions – Thomas Feddo as Assistant Secretary for Investment Security, Brent McIntosh as Under Secretary, Brian Callanan as General Counsel and Brian McGuire as Deputy Under Secretary. In addition to Treasury, other important slots were filled by Kelly Craft at the United Nations, Michelle Bowman at the Federal Reserve, Jennifer Nordquist at the International Bank for Reconstruction and Development and Eugene Scalia at the Department of Labor.

Looking forward, the Senate will consider a number of district judges, as well as Barbara McConnell Barrett to be Secretary of the Air Force immediately upon their arrival in Washington this week. In addition, we still expect to see a nomination hearing for Judy Shelton and Christopher Waller to fill the two remaining seats on the Federal Reserve Board of Governors before the year's end, although their official nominations are still pending. Shelton has already been previously confirmed by the Senate as the US member of the board of directors of the European Bank for Reconstruction and Development, which could allow for an expedited process once officially nominated, as she has been vetted before.

Expected House Financial Services Committee (HFSC) Activity

HFSC Chairwoman Waters has once again this month set forth a packed agenda, which she modified last week after securing an appearance by Facebook's CEO Mark Zuckerberg to testify in two weeks. Zuckerberg ostensibly is expected to focus on Libra and Calibra in a hearing on the impact of Facebook on financial services and housing but his appearance undoubtedly will not be limited to this area. The committee will kick off the month tomorrow with an appearance by CFPB Director Kathy Kraninger the day before she appears in front of SBC. Also tomorrow is a joint subcommittee hearing on reauthorization of the Terrorism Risk Insurance Act (TRIA), and the month ends with a mark-up, where we should see consideration of reauthorization of the Export-Import Bank (it was temporarily reauthorized in the Continuing Resolution only through the expiration of that measure on November 21st).

Here is the full planned schedule for HFSC for October:

- Wednesday, 10/16 (morning) – Full committee hearing with CFPB Director Kraninger entitled, “Who Is Standing Up for Consumers? A Semi-Annual Review of the Consumer Financial Protection Bureau.”
- Wednesday, 10/16 (afternoon) – Joint Subcommittee on Housing, Community Development, and Insurance and the Subcommittee on National Security, International Development, and Monetary Policy hearing entitled, “Protecting America: The Reauthorization of the Terrorism Risk Insurance Program.”
- Thursday, 10/17 (morning) – Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets hearing entitled, “Examining Corporate Priorities: The Impact of Stock Buybacks on Workers, Communities, and Investors.”
- Thursday, 10/17 (afternoon) – Subcommittee on Diversity and Inclusion hearing entitled, “Promoting Inclusion: Examining the Need for Diversity Practices for America’s Changing Workforce.”
- Friday, 10/18 – Artificial Intelligence Task Force hearing entitled, “AI and the Evolution of Cloud Computing: Evaluating How Financial Data is Stored, Protected, and Maintained by Cloud Providers” (*Note – discussed more below.*)
- Tuesday, 10/22 (morning) – Full committee hearing entitled, “The End of Affordable Housing? A Review of the Trump Administration’s Plans to Change Housing Finance in America.” (*Note – discussed more below*)
- Tuesday, 10/22 (afternoon) – Subcommittee on Consumer Protection and Financial Institutions hearing entitled, “An Examination of the Decline of Minority Depository Institutions and the Impact on Underserved Communities.”
- Wednesday, (10/23) – Full Committee hearing with Zuckerberg entitled “An Examination of Facebook and Its Impact on the Financial Services and Housing Sectors.”
- Tuesday, 10/29 (morning) – Subcommittee on Oversight and Investigations hearing entitled, “Financial Services and the LGBTQ+ Community: A Review of Discrimination in Lending and Housing.”
- Tuesday, 10/29 (afternoon) and Wednesday, 10/30 (if necessary) – Full committee markup

House Floor Activity

The full House is expected to consider several financial services-related bills this month, starting off this week with two bills that only received Democratic support in HFSC. One bill would require the Securities and Exchange Commission (SEC) to conduct investor testing, which is not something generally opposed by Republicans. However, concern about the impact on prior SEC rules, especially Regulation Best Interest (Reg BI), which was finalized in June, led Republicans to oppose this legislation in HFSC, so we likely will see another party-line vote on this legislation on the Floor. The other HFSC-related bill this week would require public companies to disclose annually the number of employees in each state and foreign country and the percentage change from previous years. Republicans raised concerns about compliance costs and potential misleading data when it was considered by HFSC, so this bill also could pass mainly on a party-line vote on the Floor.

As soon as next week, the full House could consider bipartisan financial services legislation to reform aspects of the Bank Secrecy Act (BSA) targeted at anti-money laundering (AML) (HR 2514) as well as legislation to report certain beneficial ownership information (HR 2513). HR 2514 passed HFSC unanimously while HR 2513 was opposed by 16 Republicans, but there has been an ongoing effort to gain more bipartisan support of this measure, so we potentially could see more Republican support when it comes to the House Floor. Some other issues we could see on the House Floor this month include legislation related to surprise medical billing, tariffs, election security and gun violence.

Appropriations

As mentioned above, Congress has until November 21st to pass a government funding bill to prevent another shutdown. It is unclear at this point if Congress will try to move smaller packages of “minibus” bills or if another continuing resolution will be necessary. The dynamics that have led to previous shutdowns still exist – notably wall funding. Of course, making matters more complicated this time around is the ongoing impeachment inquiry – again it is unclear how that will impact funding negotiations between President Trump and Speaker Pelosi.

Regulatory Agenda

We expect the regulatory agencies to continue pressing forward to finalize major portions of the Administration’s financial deregulatory agenda over October. The date on everyone’s mind is May 2020. Although the exact date is uncertain as of now, regulations finalized before then would avoid being overturned by a future Congress through the Congressional Review Act. Here is what we expect to see over the coming months:

- Treasury – Treasury is expected to publish the long awaited BEAT regulations imminently. The regulations are written and have been going through the inter-agency review process, which should have now concluded.
- Financial Stability Oversight Council (FSOC) – Earlier this year, FSOC proposed guidance to shift to an activities-based approach to nonbank financial company designations. To date, the proposed guidance has not been finalized, but we expect action by the end of the year.
- CFPB – Following the July 25, 2019 ANPR to modify the definition of a qualified mortgage, the CFPB is expected to issue a proposed rule early in 2020. Changing the patch remains the biggest administrative tool to shrink Fannie and Freddie’s portfolio and footprint.

- SEC – Always at the forefront for the SEC is the impact of potential disruptions to US capital markets. Consistent with that the agency is monitoring developments from Brexit as well as the looming transition from LIBOR. Further, with the Exchange-Traded Funds rule now finalized, the SEC’s focus will fall to updating and scaling disclosure requirements for public companies.
- FDIC/OCC/Federal Reserve – After the 2018 recommendations from the Treasury Department, the banking regulators with primary responsibility over the CRA have been working to modernize the over 40 year old law (1977). Our expectation is to see action by the end of year. Major Treasury recommendations to look out for include updating the definition of geographic assessment area, incorporating performance incentives and improvements to the exam process.
- Volcker (interagency) – While the SEC, CFTC and bank regulatory agencies finalized their proposal to simplify compliance with the Volcker Rule, the agencies are expected to address the covered funds provisions of the Volcker Rule in a future rulemaking.

Data Sharing, Privacy and Cloud Service Provider Hearings

Due to impeachment consuming Washington, a shrinking legislative calendar, lack of progress in Congress, and 2020 around the corner, we do not believe that national privacy legislation will pass into law this Congress.

There has been no major breakthrough on legislation at the committees with jurisdiction over data privacy – Commerce, Judiciary, and Banking. Each committee workstream has been holding their own hearings and working on draft legislation, but none appear to have made substantial progress so far. Though it is becoming increasingly unlikely that comprehensive privacy legislation will come out of the Senate Commerce Committee, ongoing bipartisan discussions have led to bill text being exchanged in the House Energy and Commerce Committee. While this does not change our outlook on legislation moving, it is an important development to which few are paying attention. We also expect the New Democrat Coalition to look to engage in privacy discussions.

One item to watch this month is HFSC’s October 18th AI Task Force hearing. This will be the first congressional hearing on cloud service providers and their relationship with financial institutions. Following the Capital One breach, HFSC members Nydia Velazquez (D-NY) and Katie Porter (D-CA) sent a letter to FSOC saying that bank cloud providers should be considered systemically important and subject to a new regulatory regime. We expect the hearing to mirror the letter and focus on the concentration of cloud service providers, systemic risk, data security, banks’ vendor due diligence practices, and comparative regulation in Europe. House Democrats could foreseeably criticize Trump-appointed regulators for not adequately overseeing the risks from critical emerging technologies, while House Republicans could be hesitant to rush to defend the large technology companies that make up most cloud service providers. Given that Facebook CEO Mark Zuckerberg is testifying in front of the committee the following week, we anticipate the animus against Big Tech to be a reoccurring theme in HFSC.

Housing Finance Reform

Since last month, there have been three major developments in GSE reform. First, Treasury and HUD released their highly anticipated reports on September 5th, which outlined nearly 100 legislative and administrative reforms. These recommendations should be viewed as part of a comprehensive “wish list” from the administration rather than a specific sequence of action

items to be taken. Second, SBC held a hearing about GSE reform the following week with Treasury Secretary Mnuchin, HUD Secretary Carson, and FHFA Director Calabria testifying. The most important takeaway from the hearing was that it laid bare the stark policy differences between Senate Republicans and Democrats on what a new housing finance system should look like. We believe it is unlikely that SBC Chairman Crapo (R-ID) and Senate Democrats will reach an agreement and introduce bipartisan housing finance reform legislation. Third, the Treasury and FHFA entered into a letter agreement on September 30th to amend the Preferred Stock Purchase Agreements (PSPAs) and allow the GSEs to start recapitalizing by retaining earnings up to a combined \$45 billion. We still expect future PSPA amendments to deal with a longer-term commitment fee and structural reforms to level the playing field between the GSEs and private-label securitization.

The next major item is the HFSC hearing on October 22nd with Mnuchin, Carson, and Calabria testifying. We expect the debate to be even more polarized than in the SBC hearing, with a particular focus from House Democrats like Chairwoman Waters on affordable housing and how the proposed reforms would increase the cost of mortgage credit for consumers. Looking forward, we believe that FHFA, Treasury and the CFPB will continue moving ahead with administrative reforms. Given the policy complexities, shrinking legislative calendar, and absence of a legislative product so far, we believe that momentum and attention will fully shift from legislative to administrative reform by end of year.

International

USMCA

Even with impeachment dominating the headlines, the USMCA working group continues to make progress on USMCA with US Trade Representative (USTR) Lighthizer and the Administration. Following the announcement of the impeachment inquiry, Speaker Pelosi reiterated that Democrats remain on a “continued path to yes” and Ways & Means Chairman Neal (D-MA) reaffirmed that the goal is to pass USMCA this year and led a CODEL to Mexico City last week. As mentioned above, Democrats want to show they can continue to govern, despite the impeachment inquiry, but USMCA is complicated by several policy and political considerations. Last week, the AFL-CIO and UAW raised objections to moving USMCA forward before the Thanksgiving break and without policy changes. Up until this point, labor had broadly not taken a position. Despite this development, Democrats remain hopeful of either gaining labor’s support or neutralizing their opposition. In addition, Democrats continue to closely watch Mexico’s funding for and commitment to key labor reforms and the GM strike in the US has further complicated the landscape.

Despite recent labor objections, the USMCA Working Group continues to work with USTR and officials in Canada and Mexico to seek changes to the agreement so that Democrats can support USMCA. Democrats achieving improved policy outcomes on the issues of access to medicine, labor, environment and enforcement will determine the timing for consideration.

China

Last week, the US and China held their most recent round of talks. While it is clear that the US and China are still far away from a comprehensive trade deal, President Trump announced on Friday that they had reached a limited agreement that prevents the next round of tariffs from

going into effect as scheduled today. The mini trade deal, if completed, is reported to provide some relief on agriculture, IP and financial services. However, the deal does not address complicated issues such as the blacklisting of Chinese technology companies or currency. The APEC meeting in Santiago in November will be important to watch for future signals.

Other Issues of Interest

Cannabis Banking (SAFE Act)

Legislation to provide a safe harbor for financial institutions that service cannabis businesses passed the House last month under suspension with all Democrats except for one and 91 Republicans voting for the bill. There is interest in the Senate for moving similar legislation, but even with this interest and the strong House vote, it is unclear at this point whether or when it could come before SBC and eventually the full Senate. Majority Leader McConnell (R-KY) has not indicated whether he will bring such legislation to the Senate Floor, but language important to him and Kentucky were added to the House bill to make it more palatable to him. Additionally, McConnell reportedly recently met with cannabis executives in California, so this October work period could give us some indication as to whether there is a SAFE path forward in the Senate.

BSA/AML/Beneficial Ownership

Along with potential consideration by the full House, we expect that the Senate also will continue work on anti-money laundering and beneficial ownership legislation during the upcoming work period. A bipartisan group of eight senators formally introduced S. 2563 the Illicit Cash Act last month, which addresses both anti-money laundering and beneficial ownership reform. We continue to believe that Chairman Crapo (R-ID) and Ranking Member Brown (D-OH) are working on their own bill, which we could see later this month or early November. We still believe a Crapo-Brown product is the most likely vehicle to become law.

Retirement Savings

Since the SECURE Act passed the House in a 417-3 vote in May, the bill has been stuck in limbo in the Senate while a path forward is being considered. The legislation could either advance by unanimous consent (unlikely due to objections from Senators Cruz (R-TX), Lee (R-UT), and Toomey (R-PA)), securing Senate floor time (also unlikely – there was an attempted unanimous consent agreement in September that showed it would be difficult for SECURE to pass as a standalone measure), or being attached to a broader, must-pass tax or spending package (most likely). While Senators Cruz, Lee, and Toomey are holding up the legislation by respectively raising concerns around 529 plans, small community newspapers, and technical tax corrections, others like Senate Finance Chairman Grassley (R-IA) are working to resolve their concerns and reach a resolution. We continue to monitor the fiscal 2020 funding bills and are cautiously optimistic that the SECURE Act will be attached to an appropriate legislative vehicle and ultimately signed into law this Congress.

CFTC Reauthorization

There has been indication from the Agriculture committees in both the House and the Senate that they may try and move forward with reauthorization of the CFTC. While there has yet to be

any official hearings or mark-ups scheduled, talks between the two committees and the agency have been ongoing, with a mutual interest in trying to get reauthorization done this Congress. We anticipate a mark-up to be scheduled before the end of this year in at least one, if not both, the House and Senate Ag committees. Note that the last time the CFTC was reauthorized was over ten years ago in 2008, when it was authorized through 2013 (but Congress continues to fund the commission). Several bills related to reauthorization were introduced in the House last month, and CFTC Chair Tarbert has prioritized getting reauthorization accomplished, so we anticipate to see continued activity on this effort this work period.

Political

Westerville, Ohio hosts the fourth Democratic presidential debate tonight with the ten same candidates who appeared together last month in Houston, plus Tom Steyer and Rep. Gabbard (HI). This debate is also the first one since the impeachment inquiry was launched in the House, so there will be significant attention on how the candidates handle this inevitable discussion. But what also will be interesting is whether the field continues to seemingly lean towards the top candidates – Vice President Biden, Sen. Warren and Sen. Sanders – or does one or more of the other candidates emerge as a viable alternative at the debate. With less than four months until the Iowa caucuses and monthly debates expected to continue until then, this race is narrowing but nowhere close to being decided.