

January 6, 2020



Gotta Get Through January

Welcome to 2020! While we have avoided the possibility of the government being shut down until at least this fall, January 2020 brings with it a different type of stalemate with the Senate impeachment trial of President Trump currently in limbo. However, with Congress returning to town after the holiday break, there likely will be more activity towards getting this resolved. In the meantime, the Senate will carry-on with “ordinary business,” and the House also will attempt to get back to regular order, but the recent news in Iran likely will be front and center in both chambers. On the financial services front, House Financial Services Committee Chair Waters (D-CA) released her January agenda over the weekend, while the impeachment trial uncertainty has kept the Senate Banking Committee from posting anything to its schedule for the month. Additionally, the political calendar will start to move quickly once we hit early February as the Iowa caucuses will begin the true sprint towards November, closing the already tight legislative calendar for the year. We cover these and other issues below in a preview of what we believe will be the focus in Washington for January, subject as always to external or unexpected events that could disrupt the schedule.

Impeachment

As mentioned above, the outlook for the Senate to hold an impeachment trial of President Trump remains unclear, as Congress returns this week from the holiday break. On Friday, Senate Majority Leader McConnell (R-KY) and Minority Leader Schumer (D-NY) both took to the Senate Floor, making statements on impeachment, amidst stalled talks to reach an agreement on the parameters of the impeachment trial. Both leaders remained steadfast in their positions on process, with Leader McConnell clarifying that they will “continue the ordinary business of the Senate...” until the impeachment articles are transmitted from the House. While a simple majority vote in the Senate is needed to approve the rules governing the trial, the Senate cannot hold a trial without the articles of impeachment, which House Speaker Pelosi (D-CA) has said she will not transmit until there is clarity on “what sort of trial the Senate will conduct.” While some recent polling suggests a majority of Americans believe the Speaker should send the articles to the Senate, Schumer cited recently released emails as bolstering his case that the Senate needs to hear from witnesses and require documents to be produced, noting that he and Leader McConnell are no closer to reaching an agreement than they were before the holiday break.

Expected House and Senate Floor Activity

We expect issues related to Iran to be at the forefront in both the House and Senate, following the killing of Major General Qasem Soleimani. While Soleimani was a notorious terrorist, some Members of Congress have expressed concern that there was not specific authorization by or advanced consultation with Congress. Sen. Kaine (D-VA) immediately filed a war powers resolution to prevent further escalation with Iran, which the Senate is expected to consider in the coming weeks. Following initial reactions, the White House sent a formal notification under

the War Powers Act to Congress on Saturday, which is required by law within 48 hours. Senate Minority Leader Schumer (D-NY) and Sen. Menendez (D-NJ) responded by urging the Administration to declassify the notification as a matter of national security. Speaker Pelosi released a statement shortly following the notification saying that there are “serious and urgent questions about the timing, manner and justification of the Administration’s decision to engage in hostilities against Iran.” Pelosi then released a letter outlining her concerns and announcing that the House will introduce and vote on their own war powers resolution this week. In addition to quickly gaining attention from Congress, the situation was elevated on the campaign trail among Democratic primary contenders.

As previously reported, Leader McConnell said the Senate will continue its ordinary business until the House transmits the articles of impeachment. The Senate will resume consideration of Jovita Carranza to be Administrator of the Small Business Administration (SBA) and will continue to work through judicial and other nominations. Kelly Loeffler of Georgia also will be sworn in when the Senate resumes its business on Monday. Loeffler was appointed by Georgia Governor Kemp (R) to replace Sen. Isakson, who resigned at the end of 2019. Additionally, the Senate Finance Committee will hold its markup of USMCA on January 7th, clearing the way for potential Floor consideration. While Leader McConnell said the Senate would not consider USMCA until after impeachment, the current impasse could provide a window of opportunity to ratify USMCA before an impeachment trial.

Over on the House side, along with potential measures regarding Iran, they also are scheduled to take up legislation to require the EPA to designate PFAS as hazardous substances, along with a number of suspension bills on 5G and small businesses.

Expected Senate Banking Committee Activity

The Senate Banking Committee (SBC) wrapped up a short but busy December with all major financial regulators testifying (except the OCC), and the successful completion of long-term TRIA and Ex-Im Bank reauthorizations as part of the year-end spending bills. The SBC now heads into January with the same uncertainty faced by other Senate committees. As part of the impeachment trial process in the Senate, leadership has not yet determined whether Senate committees will be able to conduct hearings prior to the day’s impeachment session. Even if committees are allowed to conduct business, we believe it is unlikely for SBC to tackle an aggressive hearing agenda. In fact, with the shortened month, just one hearing could be the most Chairman Crapo even attempts to set. Prime candidates for a possible hearing include a hearing with OCC Comptroller Otting to discuss the recently released proposed rule to reform the Community Reinvestment Act, or a hearing to set up future action on BSA/AML legislation. The more likely outcome will be for staff work to continue behind the scenes in January to prepare for oversight hearings (e.g. Humphrey-Hawkins with Federal Reserve Chair Powell in February), finalize a discussion draft on BSA/AML reform and determine if a small capital markets legislative package can come together.

Expected House Financial Services Committee (HFSC) Activity

Late Saturday, Chair Waters released the HFSC hearing schedule for the month. Waters has scheduled three full committee hearings as well as hearings in most of the subcommittees. As expected, a particular focus this month will be the recent proposal to modernize the Community Reinvestment Act (CRA). Waters raised significant concerns with the proposal and the fact that Comptroller Otting didn’t appear with other federal financial regulators in front of HFSC last month. The proposal will be considered at a January 14th Financial Institutions Subcommittee

hearing, and Waters will have her chance to question Otting on the 29th when he is expected to testify in a full committee hearing that Waters has made all about the CRA proposal. Other than this focus, the committee will continue to look into affordable housing and the potential to impose a new federal interest rate cap, among other issues. Fintechs will also see some attention as the Committee and Fintech Task Force evaluate major components of the fintech ecosystem. We note that the committee currently has not scheduled a mark-up for the month and the hearings are stacked over two weeks (there is no HFSC activity scheduled for this week and the House is out for MLK recess the week of the 20th). Below are all of the planned hearings for the month:

- **January 14th (morning)** – Full committee hearing entitled, “On the Brink of Homelessness: How the Affordable Housing Crisis and the Gentrification of America Is Leaving Families Vulnerable.”
- **January 14th (afternoon)** – Financial Institutions Subcommittee hearing entitled, “The Community Reinvestment Act: Reviewing Who Wins and Who Loses with Comptroller Otting’s Proposal.”
- **January 15th (morning)** – Monetary Policy Subcommittee hearing entitled, “A Persistent and Evolving Threat: An Examination of the Financing of Domestic Terrorism and Extremism.”
- **January 15th (afternoon)** – Capital Markets Subcommittee hearing entitled, “Overseeing the Standard Setters: An Examination of the Financial Accounting Standards Board and the Public Company Accounting Oversight Board.”
- **January 29th** – Full committee hearing entitled, “The Community Reinvestment Act: Is the OCC Undermining the Law’s Purpose and Intent?”
- **January 30th (morning)** – Full Committee hearing entitled, “Rent-A-Bank Schemes and New Debt Traps: Assessing Efforts to Evade State Consumer Protections and Interest Rate Caps.”
- **January 30th (afternoon)** – Housing Subcommittee hearing entitled, “Examining the Availability of Insurance for Nonprofits.”
- **January 31st** – FinTech Task Force hearing entitled, “Is Cash Still King? Reviewing the Rise of Mobile Payments.”

Regulatory Agenda

Heading into January, Trump Administration regulators are focused on May 2020, which is the expected threshold to complete rules to protect against a Congressional Review Act challenge. A number of major rules were finalized or proposed in the Fall, including portions of the Volcker Rule, bank holding company tailoring rules, Valid-When-Made, the aforementioned Community Reinvestment Act reform and the Qualified Mortgage (QM) Patch/Ability-to-Repay (ATR) rule. For those rules that were only proposed, regulators will be working diligently to complete and finalize before May.

Top priorities to monitor in January and heading further into Quarter 1 include work to finalize the “covered funds” portion of the Volcker Rule, efforts to secure the Federal Reserve as part of the Community Reinvestment Act reform process, the Department of Labor’s work to finalize a new fiduciary rule, and efforts by the Securities and Exchange Commission to finalize an expansion of its accredited investor rule.

More specifically, we expect possible action in January by the Consumer Financial Protection Bureau on its QM Patch/ATR rulemaking efforts as this rulemaking is a significant component of the housing finance reform agenda, and a high-profile rulemaking. Staff has had a few months now to review comments, and we expect a proposed rulemaking could pop out soon.

Other activity to monitor is the progress of the Federal Housing Finance Agency (FHFA) to re-propose the enterprise capital rule. At the end of 2019, FHFA Director Calabria made news by announcing he would not finalize the Watt regime proposed rule, but rather re-propose the rule. This announcement delays a major component of housing finance reform, but we expect the FHFA to work aggressively to re-propose as not to waste time in their reform efforts. We expect to see a higher capital level than under Director Watt.

As a complement to the FHFA's work on the capital rule, we are closely monitoring possible action by Treasury and the FHFA to release another amendment to the Senior Preferred Stock Purchase Agreement. In September, Treasury and FHFA announced that a future letter agreement would be forthcoming and could include some reform items that may limit the GSE's product and activity abilities. A letter agreement containing product and activity restrictions would provide an expedited reform tool as it allows the Administration to bypass the Administrative Procedures Act to achieve reforms without the need for public comment.

Political

Another month, another scheduled democratic presidential debate, but this one, if it occurs, will be in Iowa and will be the last before the Iowa caucuses. With four clear front runners at this point – Vice President Biden, Sen. Sanders, Sen. Warren and Mayor Buttigieg – the debate could allow one of those to position themselves as the favorite in Iowa. As of today, only those four candidates and Sen. Klobuchar have met the criteria for participation, with Yang, Sen. Booker and Rep. Gabbard as remote possibilities to be added. While the debate is scheduled for January 14th, if an agreement on the parameters of the Senate impeachment trial are reached before then and begins, there is the possibility that the debate will have to be rescheduled or even canceled. Regardless, voters in Iowa will caucus on Monday, February 3rd, and then the horse race will really get moving, with primaries coming at us every week after that – Tuesday, February 11th in New Hampshire; Saturday, February 22nd in Nevada and Saturday, February 29th in South Carolina, followed by March 3rd – Super Tuesday – with primaries in **14** states. Along with the actual voting, three debates are scheduled in February, each the week before the primary in that state – a Feb. 7th debate in New Hampshire, a Feb. 19th debate in Nevada and a Feb. 25th debate in South Carolina. Buckle up.