

May 4, 2020



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As has been the case since the middle of March, Washington continues to be focused on responding to the COVID-19 pandemic, but this week the Senate will attempt to come back to work on other items under a semblance of regular order. While the House still has not scheduled its return (at least as of this morning), it likely goes without saying, but the crisis, CARES Act implementation and discussions on future relief/recovery packages will continue to dominate. Below, though, is a brief outlook of where things stand at the beginning of May in Washington outside of the COVID-19 activity.

Congressional Calendar, Hearings and Remote Voting

As of early last week, both the Senate and House were scheduled to come back into town today, but the House quickly scrapped those plans. But Senate Majority Leader McConnell (R-KY) has held fast to his plans to bring the Senate back today to “conduct critical business in person.” McConnell’s office has explained that the Senate’s work this week relates to “policy and nominees in the COVID-19, national security, oversight, and judicial areas.” Along with Floor activity, several Senate committees are planning hearings, including a nominations hearing in the Senate Banking Committee for Brian Miller to be Special Inspector General for Pandemic Recovery, a position established in the CARES Act, and Dana Wade to be Assistant Secretary at the Department of Housing and Urban Development (HUD).

After nearly 400 Members came back to Washington late last month to vote on the emergency coronavirus legislation, the House initially planned to come back into town today, but the only legislation that was planned for the Floor was a suspension vote. While committees reportedly were working on potential activity, House leadership announced that they would heed the advice of the attending physician that having Members come back was a risk they should not take – though, next Monday May 11th is another date mentioned as a possibility for a House return. They would be expected to take up the next COVID-19 response package, which is being put together by Democrats and any consideration in the House is expected to be a partisan exercise, at least initially.

The House also still has not determined a path for remote or proxy voting or holding virtual hearings. Democratic leadership dropped plans to consider remote voting a few weeks ago, supposedly leaving it to a bipartisan commission headed by Majority Leader Hoyer (D-MD) and Minority Leader McCarthy (R-CA) to develop solutions acceptable to both parties. However, there have been signs that if a bipartisan solution is not reached, Democrats could again try to move ahead to change the rules to allow for proxy voting during the crisis.

Appropriations

Both the House and Senate Appropriations Committees continue to work on the annual funding process and are hoping to begin marking up bills relatively soon. The House seems further along in their process and is shooting to begin markups in May or June – though the schedule is obviously still in flux. We know that some of the subcommittee Chairs have received their allocations, which indicates that the process is still moving. Before the crisis, the House had hoped to pass all twelve bills by the summer, but that is now likely to slip by a few months. Due to the current scheduling challenges, we think it continues to be likely that a continuing resolution will be needed to fund the government past the November election into a lame duck.

Senate Banking Committee Activity

As previously mentioned, the Senate Banking Committee is one of the few committees holding a hearing this week upon returning to Washington. While logistics around the hearing are still in flux, Members have been advised to wear masks, refrain from bringing staff into the hearing rooms and continue social-distancing practices, which could make for a potentially difficult questioning session. We anticipate Miller's nomination as Special Inspector General for Pandemic Recovery to see sharp criticism from Democrats who will press him on his ability to remain independent from his White House post and hold the administration accountable. Notably, Chairman Crapo (R-ID) did not include the expected markup of the nominations of Chris Waller and Judy Shelton to the Federal Reserve, but we presume the signal of a markup may be an indication that Crapo believes Shelton's controversial nomination has the votes to pass through the Committee.

Senate Banking has not formally scheduled any additional hearings, but if the one this week goes smoothly, we could anticipate Chair Crapo could add a few more to the docket. In particular, we expect the Committee will hold a prudential regulator hearing towards the end of May or beginning of June. Additionally, we continue to monitor the progress of a BSA/AML/beneficial ownership package. However, until we better understand how the Committee will operate, it will be challenging to predict when a markup may occur.

Regulatory Activity

While the COVID-19 pandemic resulted in the regulators momentarily pushing pause on activity around a number of outstanding regulations we saw progressing earlier this year (Community Reinvestment Act, QM Patch reform, brokered deposits, etc.), we've started to see a shift from the agencies back to somewhat of a regular order. The focus will certainly remain on implementation of the Federal Reserve's facilities and the Small Business Administration's (SBA) Payment Protection Program (PPP), the issuance of coronavirus-related regulatory guidance and delaying comment periods on proposed rules. But agency heads have also indicated their willingness to move forward with certain key rulemakings (e.g. Regulation Best Interest, the Volcker Rule, and expansion of the SEC's accredited investor rule).

Some Democratic lawmakers have pushed to halt proceeding with rulemakings not directly related to COVID-19 crisis response, but we anticipate activity at the regulators to continue, particularly with the timeline for the Congressional Review Act (CRA) threshold in mind. Notably, this date remains uncertain and could be later than the expected late-May timeline,

due to the unexpected prolonged time that Congress has been away from DC resulting from the pandemic. However, we anticipate Trump Administration regulators will still work diligently to finalize a number of major rule proposals over May and June to protect against a CRA challenge from a potential Democratic administration.

In other news at the agencies, CFTC Commissioner Brian Quintenz announced that he would not seek re-nomination following the end of his term in April but plans to remain in his role until October 31st, or the confirmation of his successor. While we do not think Quintenz's departure will have a significant impact on the CFTC's agenda for the remainder of the year, it could, however, cause Chair Tarbert to fast-track certain regulations that would see a divided vote, making his presence essential for finalization. Quintenz also indicated that there are a few outstanding regulations that he has been largely involved in and would like to see finalized before his departure. He did not specify, but we know he has had a hand in the proposed capital and position limits rulemakings – both of which Tarbert has indicated are on the trajectory to be finalized by the fall. It is likely too early to speculate on his replacement, but we could potentially see a candidate with a similar focus on technology – Quintenz sponsors the CFTC's Technology Advisory Committee and is known to be an avid crypto-advocate. It is worth noting that his crypto-focused counterpart at the SEC, Commissioner Peirce, will see her term expire next month.

International

USMCA

Canada became the last signatory to ratify implementing legislation for the USMCA in March, but the coronavirus has since delayed the trade agreement from entering into force, which was initially targeted for June 1st. In the weeks following President Trump's declaration of a national emergency in response to COVID-19, lawmakers from both parties have sent letters to the U.S. Trade Representative's office requesting delays. 19 members of the Senate Finance Committee urged a delayed launch date, while 31 House members asked for flexibility around the rules of origin requirements for auto manufacturers, ultimately leading to USTR Robert Lighthizer notifying Congress late last month that USMCA will take effect on July 1.

Earlier this week, the Trump administration gave automakers a new deadline of July 1 to submit a draft plan laying out a delayed process for complying with new USMCA rules, with a final plan due no later than August 31. However, the three countries have not yet agreed to or shared the uniform regulations that automakers must follow. According to Politico, the draft uniform regulations are expected "a month before the deal enters into force."

China

\$50 billion out of the \$250 billion in agricultural purchases that China agreed to in the U.S.-China Phase One trade agreement kicked in in April. Amid falling demand for goods and services across the board, President Trump mentioned how this will help American farmers and has expressed cautious optimism, saying "we'll see how it goes – it seems like they're buying." However, the administration has been ratcheting up the pressure on China for its role in the global coronavirus pandemic, with the president threatening tariffs last week and increasingly making China's handling of the COVID-19 a major issue in his reelection

campaign. We view the coronavirus as having a negative effect on the US-China relationship and, ultimately, for the prospects of a Phase Two deal.

Other Trade Deals

The US and UK begin the first round of negotiations this week for a trade agreement following Brexit. The negotiations, held between the UK International Trade Secretary Liz Truss and USTR Lighthizer, will be held over video conference, last for two weeks, and take place every six weeks. This comes as the UK and EU are negotiating their own new trade deal.

Political

Even though the Democratic presidential nomination process is effectively over, primary season has not ended and continues to be extended as states further postpone their elections (for example, Connecticut has now postponed its primary until August). Aside from serving as laboratories of democracy for a potential expansion of mail-in voting in November, the primaries continues to allow Vice President Biden to collect delegates to become the official nominee at the August convention (however that is held), not to mention the contested local and state elections where a primary is still necessary. Otherwise, though, we've clearly moved into the general election where there will be significant focus on the key battleground states for the White House (Arizona, Florida, Michigan, North Carolina, Pennsylvania and Wisconsin). As of early this month, Biden is having to address sexual assault accusations that recently came to light and President Trump is under pressure and facing criticism for the Administration's response to the pandemic, but we can expect other issues to arise and the race to take numerous turns over the next few months.

On the congressional side, while regaining a majority in the House looks difficult, there's concern growing among Republicans that Senate control may be more in play than originally expected. Briefly, if Biden wins the White House, Democrats would need to net out three seats to reach 50-50 and have the Democratic Vice President break a tie. Democrats still will have a tough time defending Sen. Jones in Alabama, and Republicans see Michigan as another state where they can challenge the democratic incumbent (Sen. Peters), so more than likely Democrats will need to pick-up at least four seats to get to that even number. Democrats have focused on Arizona against Sen. McSally, Colorado against Sen. Gardner, Maine against Sen. Collins, and North Carolina against Sen. Tillis. However, they have attempted to broaden their pick-up opportunities in states like Iowa, Montana, Georgia and even Kansas. It is still a tough proposition for Democrats as Republicans are likely to maintain control, but bears watching as we head closer to November.