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# Impact of the Georgia Runoffs

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<p><b>TIED SENATE</b></p>	<p>The results of the two Georgia run-off elections are expected to lead to a 50-50 split in the Senate. On January 20<sup>th</sup>, Democrats will have control of the chamber with Vice President-elect Harris, who will be the president of the Senate, providing a 101<sup>st</sup> vote when needed to break ties. The <a href="#">last time this occurred</a> was two decades ago in 2001 under President Bush, where Majority Leader Lott worked out a deal with Minority Leader Daschle on how the Senate would operate (committees and resources were evenly split and if there was a tie vote in committee on a bill it could be brought straight to the Floor). A lot has changed over the past twenty years (nuclear option, recent Supreme Court confirmation processes, etc.), so it will be interesting to see if expected Majority Leader Schumer (D-NY) and Minority Leader McConnell (R-KY) are able to achieve such comity in reaching a power-sharing agreement.</p>
<p><b>SENATE LEADERSHIP</b></p>	<p><b><u>Democratic Leadership</u></b></p> <p>Schumer will assume the position of Majority Leader with Whip Durbin (D-IL) and Assistant Leader Murray (D-WA) retaining their leadership positions. At the committee level, here are the Senators we believe would chair the following committees:</p> <ul style="list-style-type: none"> <li>• Appropriations – Sen. Leahy (D-VT)</li> <li>• Banking – Sen. Brown (D-OH)</li> <li>• Commerce – Sen. Cantwell (D-WA)</li> <li>• Finance – Sen. Wyden (D-OR)</li> <li>• Small Business – Sen. Cardin (D-MD)</li> <li>• Foreign Relations – Sen. Menendez (D-NJ)</li> </ul> <p><b><u>Republican Leadership</u></b></p> <p>With the loss of the Majority, we do not expect to see many changes at the top. We think Sen. McConnell would stay on as Minority Leader and Sen. Thune (R-SD) as Minority Whip. The real change that we will see in this scenario will be the role Republican senators will play now that Democrats control Congress and the White House – they will pivot from helping Trump push through his legislative agenda to playing defense on much of what comes out of the House. Here are who we expect to be the top Republicans on key committees:</p> <ul style="list-style-type: none"> <li>• Appropriations – Sen. Shelby (R-AL)</li> <li>• Banking – Sen. Toomey (R-PA)</li> <li>• Commerce – Sen. Wicker (R-MS)</li> <li>• Finance – Sen. Crapo (R-ID)</li> <li>• Small Business – Sen. Rubio (R-FL) (though this could change depending on what happens with Sen. Burr (R-NC) and the Intelligence Committee)</li> <li>• Foreign Relations – Sen. Risch (R-ID)</li> </ul>

## ISSUES AND PROCEDURES

Given the makeup of the Senate, any legislation would need strong bipartisan support to reach the 60-vote threshold to pass (see below, but we do not expect there to be enough support to eliminate the filibuster at least initially). However, there are a few caveats to this proposition:

### Budget Reconciliation

- The budget reconciliation process is a procedural tool that allows a simple majority of 51 votes in the Senate to pass legislation that changes mandatory or entitlement spending, tax revenues, or the federal debt limit. If Democrats keep the filibuster in place, budget reconciliation could be used again to move major legislation, especially in the tax and health care areas. The use of this tool is limited to items directly affecting spending, and as a result, extraneous policy provisions or random pieces of legislation generally cannot be included in the package.
- Reconciliation has been used to pass major legislation in recent decades, including the Tax Cuts and Jobs Act of 2017 under President Trump, the Health Care and Education Reconciliation Act of 2010 under President Obama (which amended parts of the Affordable Care Act and consolidated all new federal student loans through the Direct Loan Program), and President Bush’s 2001 and 2003 tax cuts.
- In the financial services space, Democrats have previously signaled interest in using reconciliation to secure a financial transaction tax and raise the corporate tax rate.

### Congressional Review Act

- We expect Democrats to consider using the Congressional Review Act (CRA) in the opening months of the 117<sup>th</sup> Congress to rescind certain “major” Trump regulations that were published in the Federal Register during the “look-back period,” or the last 60 legislative days of the previous session of Congress. Based on the congressional calendar, **we estimate the CRA cutoff for the lookback period to be August 21, 2020.**
- To rescind a regulation, a joint resolution of disapproval must pass both the House and Senate by a simple majority and be signed by President-elect Biden. Congress has 60 session days beginning on the 15<sup>th</sup> session day to consider a resolution to rescind regulations from a previous administration, but moving forward can also introduce a resolution within 60 days of a promulgating agency submitting copies of a final rule to Congress and GAO.
- The CRA could have significant reach because its definition of a “rule” can include regulatory guidance, interim final rules, and policy statements.
- Rules that are rescinded using the CRA indefinitely prevent the agency that promulgated the rule from reissuing it in “substantially the same form” without congressional statutory authorization, though the CRA neither eliminates the underlying statute directing the agency to issue the rule nor defines the phrase “substantially the same.” Furthermore, the CRA can only be used to rescind rules in their entirety rather than specific provisions.
- Democrats considering the use of the CRA will need to evaluate the impact on an agency’s ability to issue rules on that topic in the future. This means that the CRA will likely be used strategically instead of as a blunt instrument to rescind all Trump-era regulations.
- *A list of potential CRA-eligible regulations can be found at the end of this document.\**

### Nominations

- As a simple majority of 51 votes in the Senate are required to confirm presidential nominees, Democrats now having control of the upper chamber means that it will be easier for the Biden Administration to get its nominees confirmed.
- Progressive Democrats are likely to push Biden to name more progressive nominees for cabinet, agency, and judicial posts that have not been announced yet at both the principal and more junior levels. These include the Secretaries of Commerce and Labor,

	<p>CIA Director, SBA Administrator, SEC Chair, CFTC Chair, CFPB Director, the Comptroller of the Currency, FHFA Director, and the Federal Reserve Governors.</p> <p><b>Filibuster</b></p> <ul style="list-style-type: none"> <li>As Democrats prepare their legislative agenda in the new Congress, they still face an obvious roadblock in the Senate – the 60-vote threshold to end a filibuster and move to vote. However, several moderate Democrats have already expressed their opposition to eliminating the filibuster. Since their support is necessary to change the rule (it requires a simple majority vote) and notwithstanding pressure from progressives, we do not expect the filibuster to be eliminated.</li> </ul>
<p><b>SENATE BANKING COMMITTEE</b></p>	<p>We expect that the Senate Banking Committee (SBC) under a Brown chairmanship will initially work with the Administration and the House to focus on consumer and investor protection issues. This may include initial actions to help consumers continue to recover from the crisis (including pushing the Fed as needed), efforts to strengthen the CFPB’s tools and expand its jurisdiction, addressing gaps in the investor protection framework, and working to ensure that renters and homeowners are protected and have access to affordable housing. Other areas of focus under a Chairman Brown include ESG investing, climate risk evaluations in financial services, and efforts to encourage the Administration to strengthen the systemic risk regime.</p> <p>While Chairman Brown will largely be able to drive his own policy agenda, we do not expect his relationship with Ranking Member Toomey to be that productive – Toomey is a former derivatives trader and served as president of the Club for Growth from 2005-2009. He also has been critical of Dodd-Frank, so given his background, he likely will be a thorn in the side in any effort to strengthen or enhance financial services regulation. And given the expected 50-50 split, it is unlikely we will see any significant legislation move in this area. However, with the ability to control the hearing agenda, we expect Brown to have more scrutiny and criticism of the private financial services sector (especially since outside of regular appearances by Biden Administration officials there won’t be as much pressure for oversight as there would be if the President was from a different party). This could mean an SBC hearing with G-SIB CEOs is likely on the table, and financial institutions should expect increased oversight from the Committee through public letters, statements, and use of other Committee tools.</p> <p>But given all of that, there also could be the opportunity for bipartisan legislation that was not a priority of current SBC Chair Crapo (R-ID) to pass, such as the SAFE Banking Act to allow banks to work with legal cannabis businesses.</p>
<p><b>NEWEST DEMOCRATIC SENATORS</b></p>	<p><b>Raphael Warnock</b></p> <p>Warnock is a longtime civil rights activist and progressive preacher focused on addressing economic and racial inequities. He has spoken broadly about his plans to focus on fighting for affordable healthcare and housing and has been critical of the government working in Wall Street’s interest. Warnock pledges to oppose corporate tax cuts, work to address gender pay gaps and unfair labor practices, and advocate for investments in women and minority-owned businesses. He has not voiced any detailed plans into how he will address these issues. Additionally, it will be interesting to see how Warnock positions himself – he is a progressive but also will immediately be up for reelection in 2022 for a full term in a state that turned blue this year but still has to be considered as one that could swing back red.</p> <p><b>Jon Ossoff</b></p> <p>Ossoff has positioned himself as a practical-minded moderate and refused to place himself on the ideological spectrum when specifically asked whether he is a moderate or progressive. Notably, he was criticized by progressives in his 2018 House run for being too centrist after promising to fight income tax increases and vote against single-payer healthcare. Ossoff is a small business owner and emphasizes the importance of a healthy banking system. However, he is critical of the government’s “safety net for Wall Street” and includes his support for reinstating</p>

	<p>the Glass-Steagall Act as part of strengthening the economy so that “Federal economic policy serves the long-term prosperity, stability, and financial security of families and productive enterprises, not short-term gains for investment banks, hedge funds, and private equity firms.”</p>
<p><b>*CRA-ELIGIBLE REGULATIONS</b></p>	<p><b><u>Securities and Exchange Commission (SEC)</u></b></p> <ul style="list-style-type: none"> <li>• Accredited investor (<a href="#">“Accredited Investor Definition”</a>)</li> <li>• Reg S-K amendments (<a href="#">“Modernization of Regulation S-K Items 101, 103, and 105”</a>)</li> <li>• Shareholder proposals (<a href="#">“Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8”</a>)</li> <li>• <a href="#">“Use of Derivatives by Registered Investment Companies and Business Development Companies”</a></li> <li>• Exempt offerings (<a href="#">“Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets”</a>) – <i>not yet published in Federal Register</i></li> <li>• Reg S-K amendments (<a href="#">“Management’s Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information”</a>) – <i>not yet published in Federal Register</i></li> <li>• Resource Extraction (<a href="#">“Disclosure of Payments by Resource Extraction Issuers”</a>) – <i>not yet published in Federal Register</i></li> <li>• <i>Proxy voting rule was published on 7/22/20, before the CRA cutoff</i> (<a href="#">“Exemptions from the Proxy Rules for Proxy Voting Advice”</a>)</li> </ul> <p><b><u>Commodity Futures Trading Commission (CFTC)</u></b></p> <ul style="list-style-type: none"> <li>• Swap dealer capital requirements (<a href="#">“Capital Requirements of Swap Dealers and Major Swap Participants”</a>)</li> <li>• Cross-border swaps (<a href="#">“Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants”</a>)</li> <li>• Position limits (<a href="#">“Position Limits for Derivatives”</a>) – <i>not yet published on Federal Register</i></li> </ul> <p><b><u>Office of the Comptroller of the Currency (OCC)</u></b></p> <ul style="list-style-type: none"> <li>• True lender (<a href="#">“National Banks and Federal Savings Associations as Lenders”</a>)</li> </ul> <p><b><u>Federal Deposit Insurance Corporation (FDIC)</u></b></p> <ul style="list-style-type: none"> <li>• Brokered deposits (<a href="#">“Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions”</a>) – <i>not yet published on Federal Register</i></li> <li>• ILCs (<a href="#">“Parent Companies of Industrial Banks and Industrial Loan Companies”</a>) – <i>not yet published on Federal Register</i></li> </ul> <p><b><u>Federal Reserve</u></b></p> <ul style="list-style-type: none"> <li>• <i>Swap margin rule was published on 7/1/20, before the CRA cutoff</i> (<a href="#">“Margin and Capital Requirements for Covered Swap Entities”</a>)</li> <li>• <i>Volcker covered funds provision was published on 7/31/20, before the CRA cutoff</i> (<a href="#">“Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With Hedge Funds and Private Equity Funds”</a>)</li> </ul> <p><b><u>Consumer Financial Protection Bureau (CFPB)</u></b></p> <ul style="list-style-type: none"> <li>• Debt collection (<a href="#">“Debt Collection Practices”</a>)</li> <li>• General QM (<a href="#">“Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition”</a>)</li> <li>• QM seasoning (<a href="#">“Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Seasoned QM Loan Definition”</a>)</li> </ul>

**Department of Housing and Urban Development (HUD)**

- Disparate impact ([“HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard”](#))

**Federal Housing Finance Agency (FHFA)**

- GSE capital ([“Enterprise Regulatory Capital Framework”](#))

**Department of Labor (DOL)**

- Proxy voting ([“Fiduciary Duties Regarding Proxy Voting and Shareholder Rights”](#))
- Fiduciary rule exemption ([“Prohibited Transaction Exemption 2020-02, Improving Investment Advice for Workers & Retirees”](#))
- ESG investing for ERISA plans ([“Financial Factors in Selecting Plan Investments”](#))