

RICH FEUER ANDERSON

The Biden Administration: February Update

February 16, 2021

<p>BIDEN ADMINISTRATION</p>	<p>The Biden Administration’s first month in office has already seen a slew of executive actions (14 presidential memos and 30 executive orders so far), congressional activity on the \$1.9 trillion coronavirus relief package, ongoing confirmations of the president’s Cabinet, and the acquittal of President Trump in his second impeachment trial by the Senate.</p> <p>Despite operating without a formal organizing resolution until earlier this month, the Senate has moved forward with a number of confirmations to key Administration posts and departments. Biden’s nominees for Homeland Security Secretary (Alejandro Mayorkas), Transportation Secretary (Pete Buttigieg) and Veterans Affairs Secretary (Denis McDonough) were confirmed by the Senate this month – all with bipartisan support. Similarly, nominations for HUD Secretary (Marcia Fudge), Council of Economic Affairs (CEA) Director (Cecelia Rouse), Education Secretary (Miguel Cardona) and Labor Secretary (Marty Walsh) each await a full Senate vote after advancing through their respective committees with bipartisan support. We expect largely party-line votes out of the two relevant committees for Neera Tanden to be Director of the Office of Management and Budget (OMB), after she was criticized by both Republicans and Sen. Bernie Sanders (I-VT) in her nomination hearings last week for her tweets and corporate contributions to the Center for American Progress. Timing for Gina Raimondo’s confirmation as Commerce Secretary is uncertain, as Sen. Cruz (R-TX) has placed a hold on her vote over concerns that she has not committed to keeping Huawei on Commerce’s Entity List. The Biden team has yet to announce official nominees to head the CFTC and the OCC, although we expect an announcement for Michael Barr as Comptroller of the Currency soon.</p>
<p>ECONOMIC TEAM UPDATE</p>	<p>While there have been key staff appointments at the Department of Treasury, SEC, HUD and USTR (noted below), there are still several key Biden economic and financial nominees awaiting confirmation hearings:</p> <p>Nominations Awaiting Confirmation</p> <ul style="list-style-type: none"> • Gary Gensler, SEC Chairman • Rohit Chopra, CFPB Director • Wally Adeyemo, Deputy Secretary of the Treasury • Marcia Fudge, HUD Secretary (<i>voted out of Senate Banking Committee</i>) • Cecelia Rouse, CEA Chair (<i>voted out of Senate Banking Committee</i>) • Gina Raimondo, Secretary of Commerce (<i>voted out of Senate Commerce Committee</i>) • Katherine Tai, U.S. Trade Representative • Miguel Cardona, Secretary of Education (<i>voted out of Senate HELP Committee</i>) • Marty Walsh, Secretary of Labor (<i>voted out of Senate HELP Committee</i>) • Neera Tanden, OMB Director <p>Recent Notable Appointments</p> <p>Department of Treasury</p> <ul style="list-style-type: none"> • Suzanna Fritzberg, Senior Advisor to the Undersecretary for Domestic Finance • Adair Morse, Deputy Assistant Secretary of Capital Access, Office of Domestic Finance

	<ul style="list-style-type: none"> • Noel Andres Poyo, Deputy Assistant Secretary for Community Economic Development, Office of Domestic Finance • Kimberly Clausing, Deputy Assistant Secretary for Tax Analysis, Office of Tax Policy • Itai Grinberg, Deputy Assistant Secretary for Multilateral Tax, Office of Tax Policy • Tom West, Deputy Assistant Secretary for Domestic Business Tax, Office of Tax Policy • Rebecca Kysar, Counselor to the Assistant Secretary, Office of Tax Policy • David Lipton, Counselor to the Secretary • Laurie Schaffer, Principal Deputy General Counsel, Office of the General Counsel <p><i>Securities and Exchange Commission</i></p> <ul style="list-style-type: none"> • Satyam Khanna, Senior Policy Advisor for Climate and ESG • Kelly Gibson, Acting Deputy Director, Division of Enforcement • John Coates, Acting Director, Division of Corporation Finance • Prashant Yerramalli, Chief of Staff, Acting Chair Allison Lee • Frank Buda, Deputy Chief of Staff, Acting Chair Allison Lee • Andrew Feller and Katherine Kelly, Senior Policy Advisors, Acting Chair Allison Lee • Justin Slaughter, Sr. Advisor to Acting Chair Lee, and Director, Office of Legislative and Intergovernmental Affairs <p><i>Housing and Urban Development</i></p> <ul style="list-style-type: none"> • Damon Smith, Principal Deputy General Counsel • Janet Golrick, Acting FHA Commissioner/Assistant Secretary of Housing • Jeanine Worden, Acting Assistant Secretary for Fair Housing & Equal Opportunity • Eric Rios, Acting Assistant Secretary for Congressional & Intergovernmental Relations • Peggy Bailey, Joe Carlile, Alanna McCargo, Richard Cho, Senior Advisors <p><i>Office of the U.S Trade Representative</i></p> <ul style="list-style-type: none"> • Sirat Attapit, Assistant USTR for Intergovernmental Affairs • Jan Beukelman, Assistant USTR for Congressional Affairs • Samuel Negatu, Director of Congressional Affairs • Nora Todd, Chief of Staff
STIMULUS NEGOTIATIONS AND BUDGET RECONCILIATION	<p>The House and Senate will spend the next month continuing work through the Budget Reconciliation process on the \$1.9 trillion American Rescue Plan for additional COVID relief. While some moderate and more fiscally conservative Democrats have expressed concerns about the size of the package or advocated for quickly moving a targeted package focused on money for vaccines and stimulus checks, the Administration has been working behind the scenes to win Democratic support for the large \$1.9 trillion package. We expect these efforts to secure the necessary votes from Democrats to ultimately succeed in passing the legislation. The relevant House committees marked up their pieces of the package last week and largely saw Democrats reject amendments from Republicans along party lines, signaling broad support from the Democratic Caucus. Key issues to watch that could potentially divide Democrats are the targeted levels for stimulus checks and an increase in the federal minimum wage to \$15, which likely will be challenging to keep in any reconciliation package due to the Byrd Rule. Moreover, previous discussions about the potential for a bipartisan package has largely shifted to discussions about getting bipartisan support for the reconciliation package. A high-level overview of the reconciliation process is included below.</p> <p>What is Budget Reconciliation?</p> <p>The budget reconciliation process is a procedural tool that allows a simple majority of votes (51), rather than the usual 60-vote threshold, in the Senate to pass certain high-priority fiscal legislation. It allows for swift passage as it is not subject to filibuster and does not need the President's signature, although both chambers must agree on the same text for the process to advance.</p>

	<p>What is the Process?</p> <p>Congress can pass up to three reconciliation bills per year addressing 1.) revenue, 2.) spending, and 3.) the federal debt limit. Notably, if Congress passes a single reconciliation bill that addresses more than one of these topics, it may not pass another measure under the process that affects a topic previously addressed. Historically, reconciliation bills have been passed at a rate of once per year, although it is possible for Democrats to offer two measures this year since the previous Congress did not pass a budget resolution.</p> <ul style="list-style-type: none"> • Both chambers must first pass an identical budget resolution that includes reconciliation instructions for the committees (Congress passed the resolution on February 5). • Committees then hold markups on elements of the bill under their jurisdiction – House committees completed their markups last week. Each House committee is required to submit its part of the reconciliation package to the Budget Committee for consolidation before it is sent to the Senate, where committee markups are not expected. • While historically the process can take up to a year to finish, the intent of congressional Democrats is to have a package ready to move in advance of the March 14th expiration of unemployment benefits. The House is preparing to move the package as soon as the week of February 22nd. <p>What can be included in a Reconciliation Bill?</p> <p>Reconciliation is limited by the Byrd Rule in the Senate to items directly affecting federal spending, tax revenues or the debt limit, and as a result, extraneous policy provisions generally cannot be included in the package. The Byrd Rule allows a provision to be removed from a reconciliation bill if deemed “extraneous” by the Senate parliamentarian. As the House is not bound by such a rule, typically there are items included in the House package that are ultimately removed in the Senate.</p> <ul style="list-style-type: none"> • Regarding spending, changes to mandatory or entitlement spending are permitted (i.e. Medicare, Medicaid, retirement, SNAP and farm programs), but not Social Security. • Increases to the federal deficit are allowed, but only for 10 years. Laws with deficit impacts longer than 10 years (as determined by the Congressional Budget Office) are not eligible. • In the financial services space, Democrats have previously signaled interest in using reconciliation to impose a financial transaction tax and raise the corporate tax rate. We do not expect tax increases to be included in the current reconciliation package amid concerns that raising taxes during a pandemic would slow the economic recovery. These provisions are more likely candidates as “pay-fors” in a potential second package that will also look at infrastructure and climate. President Biden’s proposed \$15,000 first-time homebuyer tax credit, which is not being discussed seriously in the Senate for this package, is also a candidate for a second reconciliation package. • Notably, the House Financial Services Committee portion of the reconciliation text did not include President Biden’s proposed extension of the eviction and foreclosure moratoriums and continued applications for forbearance on federally guaranteed mortgages until September 30, 2021. If they were included, these provisions likely would not have survived the Byrd Rule in the Senate.
<p>CONGRESSIONAL UPDATE</p>	<p>Both House and Senate committee rosters have now been finalized following an agreement on the power-sharing resolution in the Senate, and although committee agendas and priorities for the 117th Congress are still being formed, pandemic response, climate change and racial equity remain top items to address for the Majority.</p> <ul style="list-style-type: none"> • Congress’s ability to address these issues and pass legislation will require bipartisan support as Democrats hold the slimmest majority in both Chambers in recent history – a 50-50 split in the Senate (with VP Harris as the tie-breaking vote), and currently 221-211 in the House once Claudia Tenney (R-NY-22) is seated, given the recent passing of Rep. Ron Wright (R-TX-6).

Power Sharing Agreement

Majority Leaders Schumer (D-NY) and McConnell (R-KY) agreed on an organizing resolution earlier this month, setting the procedure for the 50-50 Senate. The resolution closely mirrors the 2001 model, evenly splitting Senate committee rosters and budgets, and leaving both the filibuster and cloture rules intact.

- Each party will have an equal number of seats on committees, but Democrats will hold the chairmanships and control the agendas, including floor time for nominees and legislation.
- If a tie vote occurs at the subcommittee level, the full committee Chair may place it on the full committee's agenda. If a tie occurs at the full committee level, the Chair is required to transmit a notice of the tied vote to the Secretary of the Senate. Once transmitted, either Schumer or McConnell may make a motion to discharge the matter to the Senate floor (debate time is limited to four hours).

Senate Banking Committee (SBC)

The Senate Banking Committee's agenda for the month has remained in flux, although we expect announcements for hearings to come within the coming week. Chair Brown (D-OH) released the full committee roster which includes 12 Democrats and 12 Republicans, although subcommittee assignments are still pending. Brown has scheduled a hearing focused on equitable pandemic relief for this week and has called for a hearing to address the recent events in the stock market but has not yet scheduled a date or announced witnesses – we expect this hearing to occur prior to a nomination hearing for Gary Gensler to be SEC Chair.

- The SBC's final roster includes the additions of Sens. Warnock (D-GA), Ossoff (D-GA), Daines (R-SD), Hagerty (R-TN) and Lummis (R-WY), with Senators Schatz (D-HI) and Sasse (R-NE) no longer on the committee.
- In addition to the SBC's February 4th vote on the nominations of Marcia Fudge as HUD Secretary (17-7) and Cecelia Rouse as CEA Chair (24-0), a hearing to consider jointly the nominations of Gensler and Rohit Chopra as CFPB Director is anticipated by the end of February or first week of March. We expect the nominees will face a contentious hearing with tough questioning from Republicans but likely pass out of SBC on party-line votes.
- Federal Reserve Chair Powell is scheduled to appear before the committee for his semiannual monetary policy report to Congress on February 23rd. We expect questions for Powell to focus on pandemic response, climate change and on his agenda under the new administration, as well as implications on the national debt from additional stimulus legislation. He will also likely be asked to elaborate on his plans to work with Secretary Yellen in her efforts at Treasury, as well as FSOC priorities.

House Financial Services Committee (HFSC)

Chair Waters (D-CA) announced a robust February agenda for the HFSC, beginning with hearings focused on additional COVID-19 relief and the impact of the pandemic on small and minority businesses. In the hearings, Waters focused her remarks primarily on the pandemic's disproportionate impact on low-income and minority communities as well as resulting effects on the housing market, which continue to track with her priorities as Chair in the 117th Congress.

- Like the SBC, HFSC's recent focus has been diverted to the recent stock market frenzy and will hold a hearing Thursday (2/18) with the CEOs of Robinhood, Citadel, Melvin Capital and Reddit, as well as the Cato Institute's Director of Financial Regulation Studies, Jennifer Schulp, set to testify.
- HFSC also will hear from Fed Chair Powell this month and its subcommittees will also hold hearings this month focused on climate change, domestic terrorist financing, discriminatory lending.
- Three Democratic members have been added to the HFSC: Reps. Ritchie Torres (NY), Jake Auchincloss (MA) and Nikema Williams (GA) (there were no Republican additions). The Subcommittee Chairs and Ranking Members are as follows:
 - **Investor Protection, Entrepreneurship & Capital Markets**
 - Reps. Sherman (D-CA) and Ranking Member Huizenga (R-MI)

- | | |
|--|---|
| | <ul style="list-style-type: none">○ Consumer Protection & Financial Institutions<ul style="list-style-type: none">▪ Chair Perlmutter (D-CO) and Ranking Member Luetkemeyer (R-MO)○ Housing, Community Development & Insurance<ul style="list-style-type: none">▪ Chair Cleaver (D-MO) and Ranking Member Stivers (R-OH)○ National Security, International Development & Monetary Policy<ul style="list-style-type: none">▪ Chair Himes (D-CT) and Ranking Member Hill (R-AR)○ Diversity & Inclusion<ul style="list-style-type: none">▪ Chair Beatty (D-OH) and Ranking Member Wagner (R-MO)○ Oversight & Investigations<ul style="list-style-type: none">▪ Chair Green (D-TX) and Ranking Member Barr (R-KY)● We also expect Waters will also announce the extension of both the Fintech and Artificial Intelligence Task Forces in the coming weeks. |
|--|---|