

RICH FEUER ANDERSON

May 2021 Outlook

May 4, 2021

<p>OVERVIEW</p>	<p>Shots in Arms, Checks in Pockets, Schools Reopen: A common refrain we hear from the Biden Administration and Congressional Democrats that represents some of the major policies enacted early in President Biden’s Administration. It will be a talking point for the accomplishments listed in the coming days as commentators evaluate the efficacy and popularity of Biden’s first 100 days (Biden’s approval rating currently sits at 54% according to FiveThirtyEight), but it also serves as a reminder that we are about to begin a major policy pivot from responding to the pandemic to shaping the future.</p> <p>Following President Biden’s remarks on the eve of his 100th day in Congress, it is clear that the President is not resting on the passage of the American Rescue Plan and has laid out an ambitious agenda including his proposed American Jobs Plan and American Families Plan. But what does it actually mean when (or if) these plans are added together? It could mean a variety of things including potentially a bipartisan infrastructure package (though likely not to the scale the Administration has outlined) or the use of reconciliation again. The fact that the path is still uncertain demonstrates the complexity of the jockeying and the policies that will be debated in the coming weeks in Washington. President Biden laid out his vision and now Congress has the pen, so stay tuned....</p>
<p>SENATE ACTIVITY</p>	<p>The Senate will fully reconvene next week following a pro forma session this week and will first consider President Biden’s nominations of Andrea Palm to be Deputy Secretary of Health and Human Services and Cynthia Marten to be Deputy Secretary of Education – we expect each will be confirmed with bipartisan support. In addition to major policy items (infrastructure, China), we expect the Senate to maintain a focus on confirming outstanding Biden nominees this month, although prospects for the confirmation of Rohit Chopra as CFPB Director remain pending and likely timed to the confirmation of Lina Khan as a commissioner at the Federal Trade Commission (FTC). Additionally, we expect to see additional pressure on Senate Democrats to pass voting rights legislation which passed through the House last month, although we see movement this month as unlikely given concerns with the legislation from both parties. The Chamber will also continue efforts on the following areas:</p> <ul style="list-style-type: none"> • Infrastructure: Before the Senate adjourned for a short recess this week, it passed the Safe Drinking Water Act by a vote of 89-2. Both Chairman Carper (D-DE) and Ranking Member Capito (R-WV) of the Senate Environment & Public Works Committee (EPW) acknowledged the legislation as a product of good faith negotiations across the aisle, signaling the potential for more bipartisan infrastructure conversations. Central to negotiations is still the scope of any infrastructure bill, but members continue to make positive statements on bipartisan support on traditional core infrastructure issues (roads, bridges, ports and broadband). EPW continues to move toward a markup before Memorial Day of the highway bill and we can expect other Committees in the Senate to continue their infrastructure discussions. Of note, Senators Capito and Klobuchar (D-MN) introduced legislation to address the “homework gap” by expanding the E-rate program to help K-12 students access the internet for distance learning. We still expect that the House will act first in bringing an infrastructure package to the floor for a vote. • China: Majority Leader Schumer (D-NY) is continuing his efforts to pass a bipartisan legislative package dealing with China and U.S. competitiveness. So far, the Senate Foreign Relations Committee marked up and passed the Strategic Competition Act on a

	<p>21-1 vote, while the Senate Commerce Committee is aiming to markup the Endless Frontier Act on May 12th after numerous delays. While we expect any Banking Committee agreement would be attached as an amendment to the broader Senate package, momentum has slowed on this front as Chairman Brown (D-OH) and Ranking Member Toomey (R-PA) have been unable to reach an agreement on the portion under the Committee’s jurisdiction, which has been focused on sanctions and CFIUS-related provisions. That said, Chairman Wyden (D-OR) and Ranking Member Crapo (R-ID) are continuing efforts to reach an agreement on the Finance Committee’s portion, which will include provisions from the America LEADS Act and may be considered separately (we still anticipate the Finance Committee to hold a markup). While Leader Schumer has announced the Senate will consider a China package this upcoming work period, we believe the timing for ultimate Senate passage of the package and related bills has likely slipped to later this month or into June. The politics and process of this China package continues to become more complex as Senators view this as a moving vehicle, the House process remains uncertain, and the potential comprehensive scope could result in Senators pushing issues that do not have strong bipartisan support, all of which may result in additional delays, and may in fact result in a package less robust than originally discussed.</p> <ul style="list-style-type: none"> • Financial Nominees: Rohit Chopra’s confirmation to be CFPB Director remains in a holding pattern as the Administration appears committed to ensuring that Republicans will not have a majority at the FTC before he departs (Lina Khan’s FTC nomination is pending in front of the Commerce Committee). Khan’s confirmation at the FTC would provide Democrats with a temporary majority until Chopra leaves, and his departure would take the commission back down to the 2-2 split as it is currently (and then allow President Biden to nominate someone else to fill the vacancy). While Chopra’s confirmation could still occur this month, the CFPB hasn’t been slowed by this delay as Acting Director Uejio is working closely with the Administration to pursue an aggressive agenda.
<p>HOUSE ACTIVITY</p>	<p>The House will also return to legislative work next week and will remain in session until the Memorial Day recess. Infrastructure will likely dominate discussions in the Chamber in the coming months, although House committees will look to address additional matters in May. Of note, the House Ways & Means Committee will mark up the bipartisan SECURE 2.0 retirement legislation this week, which we understand will largely track with the proposal from October 2020 and will likely get over the finish line this year. The House Financial Services Committee also has Floor time reserved for the second half of May and we anticipate a number of the provisions included in the markup last month could be considered, including those related to debt collection and board diversity.</p> <ul style="list-style-type: none"> • Infrastructure: Speaker Pelosi (D-CA) continues to call for consideration of an infrastructure package on the House Floor soon after the July 4th recess. While this date is ambitious, House Committees will continue to hold hearings this month on infrastructure issues under their jurisdictions, including in the House Financial Services, Energy & Commerce and Small Business Committees. We also expect the House Transportation and Infrastructure Committee to markup the highway bill at the end of the month, although partisan disagreements remain around the scope and size of the bill, as well as a funding mechanism. • China: The China package appears to be a Senate-only exercise for now with no signals the House has begun working on a similar comprehensive effort. At the center of the debate is the possible expansion of the National Science Foundation that Leader Schumer has proposed, but the House recently held a hearing on its own efforts to reauthorize the National Science Foundation.

SENATE BANKING COMMITTEE	<p>The Senate Banking Committee's (SBC) hearing agenda is still being developed although we understand Chair Brown will hold several hearings underscoring priorities for the committee under his leadership: Wall Street scrutiny, regulatory oversight and enforcement, and housing.</p> <ul style="list-style-type: none"> • SBC is scheduled to hold a hearing on May 26th with the large bank CEOs, where the six U.S. G-SIBS will testify. In addition to this hearing, we expect the Committee to have Federal Reserve Vice-Chair Quarles and possibly other confirmed prudential regulators appear later this month. • On the housing front, we anticipate Chair Brown will begin laying the foundation for a focus on affordable housing and begin to vet the Administration's proposals for housing infrastructure. We understand Brown will likely hold an additional hearing on infrastructure and could also hold a hearing for a slate of HUD nominees who were sent up to the Senate the last week of April. Finally, we are closely monitoring whether HUD Secretary Fudge will be asked to testify in support of the Biden team's housing infrastructure plan. This hearing could occur in May or June.
HOUSE FINANCIAL SERVICES COMMITTEE	<p>The House Financial Services Committee (HFSC) has a packed schedule for the month starting with hearings focused on housing and climate change, the stock market events related to GameStop, and the use of artificial intelligence in financial services (comments from the banking regulators' RFI on this topic are due June 1, 2021). Later in the month, HFSC will hold hearings focused on China's predatory lending practices, SPACs as an alternative to initial public offerings (IPOs), consumer credit reporting, and racial equality within the financial services industry. The Committee will also hold two oversight hearings - as with SBC, the G-SIB CEOs will appear in front of HFSC (May 27th) and the committee will hear from prudential regulators (OCC, NCUA, FDIC and Federal Reserve) on the 19th, as well as a full committee markup.</p> <ul style="list-style-type: none"> • The first hearing of the month will focus on building a climate-resilient housing market. Democratic members will likely focus on the climate crisis' disproportionate impact on low-income and minority households and will call for federal housing infrastructure action. Members will also likely discuss reauthorizing the National Flood Insurance Program, which is set to expire September 30th. • We expect both the AI and credit reporting hearings will have a consumer protection focus and expect Oversight and Investigations Subcommittee Chair Green (D-TX) and Artificial Intelligence Task Force Chair Foster (D-IL) to spotlight the need for removing biases in credit underwriting and scoring models, including the need for human review of AI decisions. The credit scoring hearing will likely see calls from both sides of the aisle to incorporate nontraditional data into the credit scoring system, as well as consider Democratic proposals for a negative credit reporting moratorium and a public credit reporting agency. • This week, HFSC will hold its third hearing on the GameStop stock market events with the CEOs of FINRA and DTCC as well as Securities and Exchange Commission (SEC) Chair Gary Gensler. While the hearing will seek to focus on issues related to the specific event (i.e. payment for order flow, trading settlement time, gamification of investing), we expect many Members will use the hearing to press Gensler on his agenda for the SEC, including on issues related to ESG and corporate disclosures, as well as the Archegos market events. • HFSC has scheduled a markup for next week on May 12th. While the final list of the bills for consideration has yet to be finalized, we expect it to include proposals related to housing infrastructure, compensation equity, fair lending and climate disclosures.
REGULATORY AGENDA	<p>We estimate that Congress has until May 21st to use the Congressional Review Act (CRA) to rescind Trump-era regulations finalized after August 21, 2020 (a list of CRA-eligible regulations are available here). To do so, a joint resolution must pass both the House and Senate by a simple majority, meaning that no Republican votes are necessary.</p> <ul style="list-style-type: none"> • After delays due to impeachment, the American Rescue Plan and Senate confirmations, congressional Democrats introduced resolutions to repeal the Office of the Comptroller of the Currency's (OCC) True Lender rule and the SEC's Shareholder Proposal rule.

	<p>Other non-financial regulations being targeted were issued by the Equal Employment Opportunity Commission, Environmental Protection Agency, Department of Health and Human Services, and the Social Security Administration.</p> <ul style="list-style-type: none"> • At present, SBC Chair Brown is actively working Democrats, and has potentially picked up a Republican, to target the OCC's True Lender Rule. While it is still too early to determine whether the effort will ultimately move forward, it is one to watch over the next few weeks. On a related note, Michael Hsu has been tapped to replace Blake Paulson as Acting Comptroller following Paulson's call to keep the True Lender Rule in place. • <i>Note - using the CRA to rescind a rule indefinitely prevents the agency that promulgated the rule from reissuing it in "substantially the same form" without congressional statutory authorization, although the CRA fails to define the phrase "substantially the same." As a result, some have argued that using the CRA to overturn Trump-era financial regulations could actually be counterproductive to the direction Biden regulators may want to take rules.</i> <p>Following confirmation last month, Gensler has begun his first full month as head of the SEC. Gensler comes to the Commission with an ambitious agenda and will face immediate pressure to address issues like corporate disclosures, ESG and climate risk, and additional regulation over certain market activities (i.e. SPACs, crypto, family offices). Gensler also will be expected to review and potentially revise the SEC's Regulation Best Interest (Reg BI), although we do not expect these efforts to begin this month. Gensler more likely will prioritize filling staffing vacancies within the Commission as well as address recent market events related to GameStop and Archegos.</p> <ul style="list-style-type: none"> • Gensler has announced initial senior staff appointments including Prashant Yerramalli as Chief of Staff, Heather Slavkin Corzo as Policy Director, Jessica Wachter as Chief Economist and Director of the Division of Economic and Risk Analysis as well as two Counselors, Kevin Burris (Legislative & Intergovernmental Affairs) and Scott Schneider (Public Affairs). <p>Additionally, we expect sanctions-related actions from the Treasury Department this month. On March 16th, the State Department added 24 individuals to the existing list of 10 people subject to sanctions under the Hong Kong Autonomy Act. Like in December, the Treasury Department is expected to submit a report to Congress in May identifying foreign financial institutions, if any, that knowingly conduct significant transactions with these individuals and would therefore be subject to secondary sanctions. Notably, Treasury did not identify any banks in December.</p>
<p>BIDEN ADMINISTRATION</p>	<p>With President Biden's first 100 days behind him, the Administration will face a more challenging few months ahead as it attempts to address issues and campaign promises outside of pandemic recovery, all while facing a tighter legislative calendar and increasing pressures from within his party. We expect action from the Administration on climate and cyber this month, and for Biden to continue to face calls to address more controversial issues like gun reform and immigration - although substantial action in these areas is unlikely in May. President Biden has also called on Congress to pass police reform legislation by May 25th, the anniversary of George Floyd's passing.</p> <ul style="list-style-type: none"> • Infrastructure: Following the two-part proposal from the White House released last month, we believe most of the infrastructure-related discussions will take place within Congress this month. That said, we still expect President Biden and Administration officials to continue to be intricately involved and make their case for the plan including in a meeting with some Republican Senators who led the GOP's \$568B infrastructure counterproposal as early as this week. Senate negotiations will ramp up this month, although prospects for a bipartisan agreement remain slim at this point. We expect the Administration will have to begin contemplating making concessions to its initial plan, or consider focusing first on a slimmer, more "traditional" infrastructure bill followed by a second, broader bill that addresses certain Democratic priorities (climate, housing, child care, health care, free education, etc.), which would likely be passed through reconciliation. • Climate: The White House indicated in April it would be releasing a climate financial disclosure executive order to complement the work being done at a number of agencies

	<p>and departments. While an EO generally can't bind independent agencies like the SEC, this expected order is intended to send a strong Administration signal and focus on interagency coordination, review and recommendations for action, and mandates on those doing business with the government. Timing remains unclear, but we understand it is an active workstream and expect an announcement from the White House this month.</p> <ul style="list-style-type: none">• Cybersecurity: The Biden Administration is poised to release nearly a dozen actions for an upcoming executive order relating to the Solarwinds hack and other state-sponsored cyberattacks. The draft executive order states that companies working with the federal government would be required to report hacks of their computer networks, implement new software standards, and improve internal security practices, among other things. We expect the executive order to be released in May, although the Administration has teased action items on cybersecurity since March, so a timeline remains uncertain. Similarly, this week the Department of Justice will begin its review of the department's cybersecurity strategy as it relates to supply chains, digital currencies, artificial intelligence and combating cyber threats from China and Russia. The DOJ will propose recommendations in 120 days.
--	--