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November Outlook

November 1, 2021

INFRASTRUCTURE / RECONCILIATION	After months of tedious negotiations, President Biden and Congressional Democrats announced a $1.75 trillion Build Back Better (BBB) Framework that includes key Democratic priorities such as tax incentives to fight climate change, universal pre-K, health care for seniors, and an extension of the child tax credit. While the framework is historic, both in size and scope, it is largely slimmed down from the President's original $3.5 trillion proposal. After not being able to move in September, Speaker Pelosi (D-CA) and Senate Majority Leader Schumer (D-NY) provided an October 31st target date to pass the reconciliation and bipartisan infrastructure packages. As we know, that new deadline was not met, leaving Biden heading to the United Nations Climate Conference today without a deal in hand. That said, negotiations continue, and the House could attempt to again move on both measures as early as this week, although as we've seen on a number of occasions, nothing is certain in this exercise.
	• It remains unclear how long the infrastructure vote will be delayed at this point, given the ongoing intraparty politics among Democrats. House Progressives, who saw many of their key priorities denied in the new, narrower spending bill framework, have opened a direct line of communication between Senate moderates as the two sides look to find a middle ground in a few outstanding areas. These discussions will be pivotal to the fate of the ultimate bill, as progressives will look to prevent further cuts, while seeking to garner the support of holdout moderate Senators Manchin (D-WV) and Sinema (D-AZ). If the two Senators ultimately can't get behind the budget bill, and move to advance the bipartisan infrastructure framework (BIF) on a stand-alone basis, progressive members fear the measure could be abandoned all together.
	• The newly released Build Back Better framework includes $550 billion for clean energy investments to address climate change, $400 billion for childcare and universal pre-K, $150 billion for housing provisions, plans to lower premiums for Americans who purchase insurance through the Affordable Care Act, and extending the child tax credit for one year.
	• For months, a key area of contention amongst Democrats was the debate around revenue raisers. Sen. Sinema opposed increasing tax rates on corporations and high-income individuals, forcing Democrats to explore alternatives to fund their priorities. Ultimately, the tax provisions included in the Build Back Better Framework, as released last week, include a corporate minimum tax of 15%, a surtax on very high-income earners, a 1% tax on stock buybacks, and reforms to the Global Intangible Low-Taxed Income (GILTI).
	    o Over the weekend, the G20 endorsed the Global Minimum Tax Agreement, which was an expected step on the global stage, but comes as some in Congress continue to raise concerns about US competitiveness if the US implements a minimum tax before other countries.
	    o A number of politically challenging revenue-raising provisions such as corporate tax rate increases, high-income provisions relating to IRAs, and increases in top individual and capital gains rates were taken off the table, as the overall size of the package was slimmed down.
	    o Key outstanding issues yet to be resolved include Medicare expansion, prescription drug pricing, and immigration.

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	○ A SALT agreement is also expected to be included in the final package. • As the Biden economic package continues to come together, Congress took action late last week to pass a bipartisan measure extending surface transportation programs' expiration back to December 3rd, following a brief one-day lapse of the programs at the end of last month.
ADDITIONAL FLOOR ACTIVITY	**Government Funding:** Current government funding expires on Dec. 3rd, and Congress will need to pass some sort of funding vehicle to prevent a government shutdown prior to that date. Top House and Senate Appropriators plan to convene this week to discuss top-line spending numbers, although many remain skeptical a deal will be reached this month. Given that Democratic leadership has also set Dec. 3rd as the new goal for passage of BBB and the BIF, and the debt ceiling will need to be lifted around that time, we think it's increasingly likely another continuing resolution will be needed to give appropriators more time, past this date, to finalize a broad deal. In addition to the ongoing discussions around tax and spending for the reconciliation bill, lawmakers have yet to reach a deal on defense spending figures, and disagreements remain on more controversial items like climate and border funds. **NDAA:** Given the continuing and time-consuming efforts on the infrastructure/reconciliation front, the Senate was unable to allot floor time to consider their version of the FY2022 National Defense Authorization Act last month, as was originally planned. We understand the timing has slipped until mid-to-late November, but that the two chambers have already started to "pre conference" a bit, which could accelerate the overall process once advanced by the Senate. **Nominations:** The Senate will kick off this week with consideration of a number of Biden nominations, including two Treasury appointees, Ben Harris (Assistant Secretary for Economic Policy) and Jonathan Davidson (Deputy Undersecretary). Majority Leader Schumer has scheduled a vote on the two nominations, following a hold by Sen. Cruz (R-TX) that prevented them from passing by unanimous consent. Also on the docket is a confirmation vote for Rajesh Nayak to be Assistant Labor Secretary, among a few others. **Cyber:** The Senate Homeland Security and Governmental Affairs Committee (HSGAC) is slated to markup a number of cyber-related bills this week, including a bill directing CISA to establish a National Cyber Exercise Program, in order to test US response plans for major cyberattacks (The CISA Cyber Exercise Act). HSGAC will also consider measures to improve the federal cybersecurity workforce, and to enhance critical infrastructure cyber resilience. The issue remains a priority item among HSGAC Chair Peters (D-MI) and Ranking Member Portman (R-OH) who, as a reminder, are spearheading the Cyber Incident Reporting Act, which has gained momentum in Congress and passed out of the Committee early last month. The House Homeland Security Committee will also hold a cyber-focused hearing this week with CISA Director Easterly and National Cyber Director Inglis, and the House is slated to consider a few related bills on the floor this week, focused primarily around small business cybersecurity training, mitigation and resilience.
SENATE BANKING & HOUSE FINANCIAL SERVICES COMMITTEES	The Senate Banking Committee (SBC) will begin the month with a hearing tomorrow focused on the LIBOR transition. Witnesses include former CFTC Chair Chris Giancarlo, Structured Finance Association head Michael Bright, Andrew Pizor from the National Consumer Law Center and Thomas Wipf from Morgan Stanley. We expect members from both parties will underscore the need for federal legislation to address legacy contracts and may discuss the October interagency joint statement which provided clarity around certain circumstances in which continuing to transact in LIBOR may be necessary. Republicans are expected to call for flexibility for institutions to choose alternative benchmark rates. • The Committee could hold an additional housing-focused hearing, as well as a nominations hearing for Biden's intended pick to lead the OCC, Saule Omarova. It remains unclear whether Omarova will have the votes to pass out of the SBC, particularly following concerns from Sen. Tester (D-MT), and without the support of any Republicans. Additional moderate Democrats have remained publicly quiet to

	date, but our expectation is that the Chair Brown (D-OH) could push for a hearing as early as later this month. Should Omarova move forward, we anticipate a tie vote, at best, within the Committee. This will require extra Senate Democrats to take extra procedural steps (e.g., Committee discharge vote) to move her nomination forward. HFSC has a lighter agenda than previous months, beginning tomorrow with a hearing in the Fintech Task Force focused on buy now, pay later (BNPL) and other emerging financial products, such as earned wage access products. We expect the focus will remain broad, and on the need for greater regulatory clarity, particularly from the CFPB, in this space while encouraging innovation in digital payments. Some Democrats may likely raise concerns around associated consumer fees and potential similarities with payday lending. • Also this week, HFSC will hold a hearing in the Consumer Protection and Financial Institutions Subcommittee focused on cybersecurity and privacy challenges facing financial institutions. We expect members will focus on identifying gaps in current efforts by the White House, Treasury, and financial regulators to address the emergence of cyber threats to the private sector, as well as discuss potential reforms to current data security laws (i.e., GLBA, ETA, FCRA). Additional areas of discussion could include certain cyber incident reporting legislative proposals, cyber insurance, the role of FSOC in this space, data aggregators and recent data breaches. • This month, HFSC also will hold two additional subcommittee hearings, with one on Thursday (11/4) in the National Security Subcommittee entitled, "From Timber to Tungsten: How the Exploitation of Natural Resources Funds Rogue Organizations and Regimes," and the second one on November 9th in the Diversity and Inclusion Subcommittee entitled, "There's No Pride in Prejudice: Eliminating Barriers to Full Economic Inclusion for the LGBTQ+ Community." The month will conclude with a markup on Tuesday, November 16th. The list of bills up for consideration remains in flux but may likely include any number of the consumer protection-focused bills included in last month's CFPB hearing, among others.
REGULATORY	**Federal Trade Commission (FTC)**: Last week, tensions rose at the FTC as Chair Khan continued to ramp up her focus on competitiveness and the merger review process. The two sitting Democratic commissioners teamed up with a "zombie vote" cast by Rohit Chopra to impose prior approval requirements to the merger review process through a policy statement. This follows FTC's rescission in July of the 1995 Policy Statement on Prior Notice and Prior Approval. **Consumer Financial Protection Bureau (CFPB)**: CFPB Director Chopra has been on the job less than a month, but he has already been busy with a sweeping review of large technology and payment companies that participate in the consumer finance marketplace. Additionally, he has already taken the less than pleasant step of testifying in front of Congress which is usually a combative audience for a CFPB director. Chopra is someone who will be aggressive in using CFPB tools across rulemaking, supervision and enforcement right off the bat, particularly given his long delay getting into office,. At his hearings, he highlighted his prioritization of holding repeat violators to account, moving forward with the Section 1071 small business data rulemaking, prioritizing oversight of mortgage servicers, among other items. **Federal Reserve Nominations**: Heading into November, the clock is ticking for President Biden to make his much-anticipated nomination of a Federal Reserve Chairman. It is also likely Biden will name a Vice Chairman of Supervision nominee and possibly a Vice Chairman nominee at the same time, to replace Randy Quarles and Richard Clarida. It is customary for Presidents to nominate or re-nominate Federal Reserve chairs in November. At the time of this writing, we still favor Powell to be renominated, current Federal Reserve Governor Lael Brainard to get the Vice Chairman of Supervision nomination, and someone favored by progressives for the additional Vice Chairman slot.

	FSOC Climate Report: Of note from late last month, FSOC published its long-anticipated Report on Climate-related Financial Risk, which was approved with the support of all FSOC voting-members with the exception of FDIC Chair McWilliams who abstained from voting. The report provides FSOC member agencies with some leeway to continue their climate-related risk assessment efforts, as it does not provide specific deadlines for action at specific agencies. We expect the first concrete action stemming from the report will be the establishment of two climate-focused advisory committees within FSOC, responsible for engaging with industry stakeholders and monitoring regulatory efforts to combat and assess climate-related financial risk. The remainder of the report's 30 recommendations will remain a work in progress for the foreseeable future. Arguably the most significant of the recommendations was the call for additional climate-related data to enable member agencies to perform their work.