

RICH FEUER ANDERSON

# December 2022 Outlook

November 29, 2022

<p><b>OVERVIEW</b></p>	<p>As lawmakers return to Washington to finish out the business of the 117th Congress, there are two topline items Congress needs to address before the new year –funding the government before current funding expires on December 16<sup>th</sup> and passing the National Defense Authorization Act (NDAA). Additionally, Democrats will try to tackle several other legislative priorities before they lose control of the House of Representatives, such as reforms to the Electoral Count Act, additional support for Ukraine, and additional funding to prepare for a possible coronavirus winter surge. While there are a number of priorities that legislators would like to address before the new year, there is a limited amount of time left on the legislative calendar – the Senate is scheduled to be in session for seventeen days while the House is only scheduled to be in session for twelve.</p> <p>We also expect crypto markets to receive significant attention from lawmakers given the recent implosion of FTX and the subsequent market implications. The Senate Banking, House Financial Services, and Senate Agriculture Committees will hold hearings on digital assets and FTX this month, with calls for legislative action that will not occur until the new Congress. Meanwhile, Democrats will continue with both confirmations and regular hearing agendas including topics such as discrimination in banking, digital trade policy, implementation of the Bipartisan Infrastructure law, and ESG-related topics, among others.</p>
<p><b>LAME DUCK SESSION</b></p>	<p>Congress returns to Washington this week with hopes of finalizing key legislative priorities before the end of the year, while also focusing on organizational work necessary before the start of the 118<sup>th</sup> Congress. There are two outstanding items lawmakers must pass: funding the government through another continuing resolution (CR) or an omnibus package, and enacting the FY2023 NDAA, which Congress has passed for 61 consecutive years, and we expect this year to be no different.</p> <p>In addition, several other legislative priorities remain on the agenda including addressing expiring health care provisions and tax extenders, the Safe Banking Act (pertaining to banking marijuana businesses), SECURE 2.0 (a comprehensive package of retirement policies), electoral reform, marriage equality, and confirming key judicial and regulatory nominees. President Biden is meeting with Congressional leaders today to discuss many of these priorities.</p> <p><b>Government spending:</b> Congress must pass a funding bill before Dec. 16<sup>th</sup> to prevent a government shutdown. The first step towards a comprehensive funding deal is agreeing on top-line defense and nondefense spending levels — which Democrats and Republicans are still negotiating. Some Democratic leaders are already considering extending the deadline until Dec. 23<sup>rd</sup> to allow more time to reach a long-term agreement. According to Senate Appropriations Vice Chair Richard Shelby (R-AL), discussions on top-line figures will likely heat up after the runoff for Georgia's Senate seat on Dec. 6<sup>th</sup>, but that would leave only ten days until the current deadline for funding expires. We do not anticipate a government shutdown and while both parties want to reach a long-term deal, it is likely that additional time will be needed. An omnibus coming together is necessary for several the other items we discuss below (SECURE and SAFE) to ride on.</p>

**FY2023 NDAA:** Unlike government funding, there has been significant progress made on the NDAA. The Armed Services Committees are hopeful they can file a pre-conferenced version of the bill by the end of this week and pass it by the end of next week. This timeline could slip due to some potential abortion-related issues, but we expect the bill to be passed by both chambers before the end of the year. Items not directly related to defense authorization need sign off from all four corners to be included, so we don't anticipate the bill will carry many extraneous policy riders such as the SAFE Banking Act and other financial services related provisions – those will be left to a potential omnibus.

**Retirement legislation:** Advocates of “[SECURE 2.0](#)” are bullish the retirement package will become law during the lame duck session. While it has broad, bipartisan support in the House and Senate, differences still need to be ironed out. We think the legislation is likely to be included in a year-end package similar to the original 2019 SECURE Act which was attached to the appropriations bill then. Indeed, as it stands now there is no policy or process reason for the package to be left out.

**Debt Limit:** Several Democrats have floated the idea of addressing the debt ceiling in the lame duck session to avoid a long-running negotiation with House Republicans next year. However, since the debt ceiling is unlikely to be reached until mid-next year at the earliest, we believe that without more assertive involvement by the White House and the likely need for Democrats to utilize the budget reconciliation process for such an extension, there will not be sufficient time or political will to address the issue during the remainder of this year.

**Electoral Count Act (ECA):** Senate Majority Leader Schumer (D-NY) has indicated that the bipartisan [Electoral Count Reform and Presidential Transition Improvement Act](#) will receive a vote before the end of the year. The ECA passed out of the Senate Rules Committee earlier last month with bipartisan support, including from Minority Leader McConnell (R-KY) and Minority Whip Thune (R-SD). The legislation, if passed, will reform the antiquated Electoral Count Act of 1887, and clarify that that Vice President's only role is essentially ceremonial – to oversee the certification of the election results, not unilaterally determine which votes count and which don't. The legislation has support in the House, and we believe it is a likely contender to become law during the lame duck session, which will make it the most prominent response to the January 6<sup>th</sup> attack on the United States Capitol to date.

**Judicial Nominations:** President Biden has already had 85 of his judicial nominees confirmed in the 117<sup>th</sup> Congress and has nearly 60 nominees pending before the Senate. Leader Schumer and Sen. Durbin (D-IL), the Chairman of the Senate Judiciary Committee, have already stated that confirming President Biden's judicial nominees will be a top priority for the lame duck session. While Democrats have retained control of the Senate, meaning they can continue ticking through confirmations over the next two years, nominations still expire at the end of the Congress, which means we can expect Democrats to try to confirm as many nominees as possible by the end of the year.

**Safe Banking Act:** Earlier this month, Senate Banking Committee Chair Brown (D-OH), Sen. Daines (R-MT) and other lawmakers met with Majority Leader Schumer (D-NY) to discuss passage of the Safe Banking Act. Chair Brown stated that he was “fairly optimistic” that Senators would come to a bipartisan agreement on the matter, and advocates of the legislation share this similar optimism. That said, the [Safe Banking Act](#) has passed the House six different times but has continuously stalled in the Senate because it does not address criminal justice reform- a key demand from some progressive Senators. This time around, legislators are taking a closer look at coupling the Safe Banking Act with the [HOPE Act](#)- a bill introduced by Reps. Joyce (R-OH) and Ocasio-Cortez (D-NY) that creates grants for state expungement programs, to appease progressives and Republicans and get it past the finish line. We think the election outcome was a slight positive for passage of the SAFE Banking Act and increases the urgency to get it across the finish line this year – as it is unlikely that a Republican-controlled House would prioritize it next

	<p>year. While Chair Brown has floated some tweaks to the bill, we do not anticipate many significant changes from the House passed version.</p>
<p><b>POLITICAL</b></p>	<p>The House makeup currently stands at a 220-213 Republican majority, with two races technically still outstanding – CO-3 and CA-13. Both races are expected to deliver for the GOP but remain too close to officially call. The Senate currently sits at a 50-49 Democratic majority, though the chamber’s final makeup is dependent on next week’s Georgia runoff election. We expect the Georgia race to be close – Warnock edged out Walker by &lt;1% despite not reaching the 50% threshold to claim victory in November, with the Libertarian candidate (who will not be on the runoff ballot) capturing 2% of the vote. Warnock is currently out-raising Walker – with nearly 3x the funds on hand – and is leading most polls by an extremely slim margin, with an already notable level of early voter turnout. While this race won’t determine control of the Senate, a victory would help Democrats avoid another 50-50 power sharing agreement and provide more breathing room when dealing with moderate Senators Manchin (D-WV) and Sinema (D-AZ). Also, this one-seat difference creates two varying processes in terms of committee rosters and party-split, so we don’t expect to see full committee rosters until early next year. That said, party leadership elections kicked off last week as both sides begin to set their agendas for the new Congress.</p> <p><b>House Republican Leadership Elections</b></p> <p>The results of the House Republican leadership elections were announced on Tuesday, November 15<sup>th</sup>. While Rep. McCarthy (R-CA) easily fended off a challenge from Freedom Caucus Chair Biggs (R-AZ) in the conference vote, the real test will come on January 3<sup>rd</sup> when he needs 218 votes on the House Floor to become Speaker. So far six Republicans have said they might vote against him (he can only lose four) but it is not yet clear whether these are firm “no” votes or members trying to extract some concessions from him. So far, no legitimate challenger to McCarthy has emerged and we ultimately think he will become Speaker. Also of note, House Republicans will vote on regional representation for the Steering Committee this week. Once that process is completed, the Steering Committee will begin the process of voting on committee chairs – which will likely last until the end of next week. We do not expect them to populate committees until the 118<sup>th</sup> Congress begins in January. The Republican leadership roster is as follows:</p> <ol style="list-style-type: none"> <li>1. <b>Speaker Nomination:</b> Kevin McCarthy (CA)</li> <li>2. <b>Majority Leader:</b> Steve Scalise (LA)</li> <li>3. <b>Majority Whip:</b> Tom Emmer (MN)</li> <li>4. <b>Conference Chair:</b> Elise Stefanik (NY)</li> <li>5. <b>Policy Committee Chair:</b> Gary Palmer (AL)</li> <li>6. <b>NRCC Chair:</b> Richard Hudson (NC)</li> <li>7. <b>Conference Vice Chair:</b> Mike Johnson (LA)</li> </ol> <p><b>Senate Republican Leadership Elections</b></p> <p>Despite some intraparty politics including calls to postpone these elections until after the Georgia runoff – as well as tensions stemming from November’s outcomes – Senate Republican leadership elections continued as scheduled and the results were announced on Tuesday, November 16<sup>th</sup>. Sen. McConnell handily fended off a challenge from Sen. Rick Scott (R-FL) to be Minority Leader for the 118<sup>th</sup> Congress. The remaining leadership outcomes played out as expected and are included below.</p> <ol style="list-style-type: none"> <li>1. <b>Minority Leader:</b> Mitch McConnell (KY)</li> <li>2. <b>Minority Whip:</b> John Thune (SD)</li> <li>3. <b>Conference Chair:</b> John Barrasso (WY)</li> <li>4. <b>Policy Committee Chair:</b> Joni Ernst (IA)</li> <li>5. <b>NRSC Chair:</b> Steve Daines (MT)</li> <li>6. <b>Conference Vice Chair:</b> Shelley Moore Capito (WV)</li> </ol>

**House Democratic Leadership Elections**  
 On November 17<sup>th</sup>, Speaker Nancy Pelosi (CA) and Majority Leader Steny Hoyer (MD) announced that they will not run for leadership positions in the 118th Congress. Assistant Speaker Jim Clyburn (SC) is expected to remain in leadership in the minority as the Assistant Leader.

House Democratic leadership elections will take place this week on November 30<sup>th</sup> and December 1<sup>st</sup>, with committee Ranking Member elections likely taking place the week of December 5<sup>th</sup>. The following is a breakdown of the expected leadership team, along with candidates for contested leadership elections:

1. **Minority Leader:** Rep. Hakeem Jeffries (NY)
2. **Minority Whip:** Rep. Katherine Clark (MA)
3. **Caucus Chair:** Rep. Pete Aguilar (CA) [Note: Caucus chair will now be the #3 ranking position in leadership, and Assistant Leader will be the #4 position]
4. **Assistant Leader:** Rep. Jim Clyburn (SC)
5. **Caucus Vice Chair:** *Contested*. Current candidates: Rep. Joyce Beatty (OH), Rep. Debbie Dingell (MI), Rep. Ted Lieu (CA), and Rep. Madeleine Dean (PA)
6. **DCCC Chair:** *Contested*. Current candidates: Rep. Tony Cárdenas (CA), and Rep. Ami Bera (CA)
7. **Democratic Policy and Communications Committee (DPCC) Chair:** Rep. Joe Neguse (CO)
8. **DPCC Co-Chairs** [there are three co-chairs]: *Contested*. Current candidates: Rep. Veronica Escobar (TX), Rep. Adriano Espaillat (NY), Rep. Chrissy Houlahan (PA), Rep. Dean Phillips (MN), Rep. Lauren Underwood (IL), Rep. Susan Wild (PA), and Rep. Nikema Williams (GA)
9. **Caucus Leadership Representative** [must be a member who has served five terms or fewer]: *Contested*. Current candidates: Rep. Lizzie Fletcher (TX), and Rep. Sara Jacobs (CA)

**Senate Democratic Leadership Elections**  
 There will be minimal changes at the top of Senate Democratic leadership: Sen. Chuck Schumer will continue as Majority Leader, and Sen. Dick Durbin (IL) will continue as Majority Whip. However, because Sen. Patty Murray (WA) will become both the Senate president pro tempore and Chair of the Appropriations Committee, she will be vacating her role as Assistant Democratic Leader, which is the third-ranking position in leadership. Senate Democratic leaders are likely to eliminate the role entirely, in which case Sen. Debbie Stabenow (MI) — who is currently fourth-ranking member of leadership as the Democratic Policy and Communications Committee (DPCC) Chair — would move up to become the third-ranking member of leadership. Finally, reports indicate that Sen. Mark Kelly (AZ) may be interested in becoming the Chair of the Democratic Senatorial Campaign Committee (DSCC).

**SENATE BANKING & HOUSE FINANCIAL SERVICES COMMITTEES**

The Senate Banking Committee and the House Financial Services Committees will have a busy few weeks before the end of the Congress – filled with oversight hearings with key regulators, high profile hearings on the FTX crash and the digital asset industry, and nominations hearings. Financial Services Chair Waters (D-CA) has also scheduled a series of hearings focused on several of her priority issues given that this will be her last month serving as Chair of HFSC. This includes topics like affordable housing and diversity in the financial services space. Below is an overview of upcoming committee activity.

**Senate Banking Committee**

- **November 30<sup>th</sup>:** SBC will hold a nomination hearing to consider **Martin Gruenberg** to be a Member and Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation; **Mr. Travis Hill**, to be a Member and Vice Chairperson of the

	<p>Board of Directors of the Federal Deposit Insurance Corporation; <b>Mr. Jonathan McKernan</b> to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation; and <b>Dr. Kimberly Ann McClain</b>, of Maryland, to be an Assistant Secretary of Housing and Urban Development. We believe that the FDIC nominees are likely to be confirmed as a package before the end of the 117<sup>th</sup> Congress.</p> <ul style="list-style-type: none"> <li>• <b>December 1<sup>st</sup>:</b> SBC will hold a hearing entitled “Fairness in Financial Services: Racism and Discrimination in Banking.” The previously postponed hearing is a priority for Chair Brown and will feature a panel made up of representatives from the National Fair Housing Alliance, the National Urban League, and the Center for Equal Opportunity, among others.</li> <li>• <b>Week of December 12<sup>th</sup>:</b> We expect SBC to hold an oversight hearing with CFPB Director Chopra.</li> <li>• <b>Week of December 12<sup>th</sup>:</b> We expect SBC to hold a hearing on the implosion of the FTX cryptocurrency exchange. The witnesses and scope of the hearing are still unclear.</li> </ul> <p><b><u>House Financial Services Committee</u></b></p> <ul style="list-style-type: none"> <li>• <b>December 1<sup>st</sup>:</b> The full Committee will convene for a hybrid hearing entitled, “Boom and Bust: The Need for Bold Investments in Fair and Affordable Housing to Combat Inflation.”</li> <li>• <b>December 6<sup>th</sup>:</b> The Subcommittee on Diversity and Inclusion will convene for a hybrid hearing entitled, “Unfinished Business: A Review of Progress Made and a Plan to Achieve Full Economic Inclusion for Every American” We expect the D&amp;I subcommittee to review past reports on diversity and inclusion in different financial sectors, like insurance, asset management, and banking.</li> <li>• <b>December 6<sup>th</sup>:</b> The Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets will convene for a hybrid hearing entitled, “E, S, G and W: Examining Private Sector Disclosure of Workforce Management, Investment, and Diversity Data.”</li> <li>• <b>December 7<sup>th</sup>:</b> The Subcommittee on Oversight &amp; Investigations will convene for a hybrid hearing entitled, “An Enduring Legacy: The Role of Financial Institutions in the Horrors of Slavery and the Need for Atonement, Part II.”</li> <li>• <b>December 13<sup>th</sup>:</b> The full Committee will convene for a hybrid hearing entitled, “Investigating the Collapse of FTX, Part I.” We expect ample discussion on the implosion of FTX and the ramifications for the industry more broadly. The witnesses and scope of the hearing are still coming together. We expect several hearings next year focused on FTX, the role of market regulators, and potential legislative gaps when Rep. McHenry (R-NC) takes over the Committee.</li> <li>• <b>December 14<sup>th</sup>:</b> The full Committee will convene for a hybrid hearing entitled, “Consumers First: Semi-Annual Report of the Consumer Financial Protection Bureau.” We expect CFBP Director Chopra to receive significant backlash from House Republicans.</li> </ul>
<p><b>DIGITAL ASSETS</b></p>	<p>The implosion of the cryptocurrency exchange FTX and subsequent market fallout has policymakers concerned. Since the collapse, crypto markets have been in turmoil, and there is a growing list of crypto trading firms and exchanges that are halting withdrawals, such as Genesis and BlockFi (BlockFi filed for Chapter 11 bankruptcy yesterday). Regulators and legislators have taken notice of the shocks and are conducting oversight accordingly in fear of contagion spreading across the broader crypto ecosystem.</p> <ul style="list-style-type: none"> <li>• On <b>December 1<sup>st</sup></b>, the Senate Agriculture Committee will hold a hearing on FTX entitled, “Why Congress Needs to Act: Lessons Learned from the FTX Collapse.” CFTC Chair Behnam is set to testify. We expect Senate Ag Committee Chair Stabenow (D-MI) and Ranking Member Boozman (R-AR) to use the hearing to underscore the need for more regulation in the space, and Chair Stabenow will likely push for consideration of the legislation she introduced with Boozman, the <a href="#">Digital Commodities Consumer</a></li> </ul>

	<p><a href="#">Protection Act</a>. While there is a newfound sense of urgency for the regulation of cryptocurrency since the collapse of FTX, we think it is unlikely that any digital asset legislation will be considered until the 118<sup>th</sup> Congress.</p> <ul style="list-style-type: none"> <li>• The Senate Banking and House Financial Services Committees will also hold hearings on FTX. The House Financial Services Committee hearing will take place on December 13<sup>th</sup>, with the witness list still coming together, while a date for the Senate Banking Committee hearing has yet to be announced. We expect that recent events will further pause efforts between HFSC Chair Waters and Ranking Member McHenry on digital assets legislation – which had already faced roadblocks – although expect this to be a priority for McHenry when he assumes the gavel next Congress.</li> <li>• Additionally, Democratic Senators like Sens. Warren (MA), Durbin (IL), Smith (MN) and SBC Chair Brown (OH) have sent letters to different financial institutions raising concerns about their engagement in crypto-related activities given the recent volatility in the space. We expect these Senators to remain engaged on digital assets more broadly, especially as we learn more about the collapse of FTX and potential risks to other sectors of the economy.</li> </ul>
<b>REGULATORY AGENDA</b>	<p><b><u>Prudential Regulators</u></b> The FDIC Board could possibly receive a Christmas present this year with tomorrow’s Senate Banking Committee nominations hearing. The FDIC Board has been scrutinized by both Democrats and Republicans over the years due to long vacant seats and the resignation of former Chair Jelena McWilliams after a dispute where the Democratic majority on the board voted to solicit feedback on bank mergers without the consent of the chair. We expect the FDIC nominees to be grilled on issues related to digital assets in the context of permissible bank activities, Republican scrutiny of Gruenberg’s role in McWilliams’ ousting, and fintechs – including bank partnership and industrial loan companies (ILCs). It is our view that the White House and Senate leadership may try to move these nominees through confirmation in a package by the end of this month. If this occurs, it would be the first time since 2015 there has been a full FDIC Board.</p> <p><b><u>FSOC</u></b> Last week, the WSJ reported on possible plans for the Financial Stability Oversight Council (FSOC) to move away from the Trump Administration’s FSOC guidance on regulating financial stability risk through an activity and products-based approach. While details are still unclear, this report is in close proximity to November testimony by sitting bank regulators when they stated they would support shifting to an entity designation framework where nonbank companies could be designated for enhanced regulatory oversight conducted by the Federal Reserve. Progressives, including Sen. Warren (D-MA) have been critical of the activities-based approach framework and the failure to designate companies. However, Treasury Secretary Yellen has been publicly supportive of the activities-based approach on numerous occasions. In our view, if such a shift were to occur, it will be a lengthy and deliberative regulatory process. Additionally, it is unlikely under Yellen that FSOC will simply repeal the guidance and “snap back” to pre-Trump entity designation. Instead, at present, we expect a middle course with new guidance that would allow a dual track to addressing financial stability risk with activities-based approach and nonbank entity designation being concurrently available instead of nonbank designation as a last resort. We will be monitoring any intelligence in the upcoming release of the FSOC Annual Report, expected in December, and the final FSOC meeting of the year also expected in December.</p> <p><b><u>CFPB</u></b> Consumer Financial Protection Bureau (CFPB) Director Chopra is likely to testify in December in the Senate Banking and House Financial Services Committees to satisfy his semi-annual testimony responsibilities. These CFPB hearings are usually partisan with little bipartisan support of policy initiatives. This hearing will be no different, and if anything, will be more confrontational given the recent 5<sup>th</sup> Circuit ruling on CFPB funding constitutionality. We expect</p>

Chopra to touch on some of his rulemaking priorities including Section 1033. We will be closely monitoring discussions related to next steps on Chopra's refinance initiatives, and his continued focus on vertical integration banking services housed within technology companies. Chopra also has recently been outspoken in his criticism of the US bank merger framework, including recent merger approvals. In November, he also raised concerns about the ability to unwind the largest financial firms in bankruptcy proceedings. Speaking through his FDIC Board role, Chopra criticized the resolution plan process and said it was "highly unlikely" any of the submitting institutions could be resolved in a rapid and order manner. He also added that "ending 'too big to fail' continues to be a goal but is not yet a reality."

### **Housing**

#### *Pricing*

Given the significant and rapid increase in interest rates, there has been renewed efforts to look at pricing levers within government housing programs. As part of a targeted change to Fannie Mae's and Freddie Mac's guarantee fee pricing announced last month, the Federal Housing Finance Agency (FHFA) eliminated upfront fees for some borrowers and affordable mortgage products, while increasing upfront fees for cash-out refinance loans. All eyes have now shifted to the Federal Housing Administration (FHA) and an expected decision to adjust mortgage insurance premiums. In November, the FHA released its annual actuarial report, which serves as the foundation to make adjustments if financial conditions allow. The FHA now holds 11% reserve in its Mortgage Insurance Fund – well above the statutory requirement. Observers anticipate FHA will announce its decision in December to adjust several aspects of the mortgage insurance premium.

#### *Federal Home Loan Bank Review*

Earlier this year, FHFA Director Sandra Thompson announced a comprehensive review of the Federal Home Loan Bank (FHLB) System. This review – called FHLB System at 100: Focusing on the Future – kicked off with three separate stakeholder listening sessions in September. It has proceeded to regional roundtables with invited speakers focused on key issues within the system. The first, hosted in Washington D.C. in early November, focused on mission and purpose. Upcoming roundtables in Philadelphia, Mississippi, and Chicago will tackle issues like membership, and closing the minority homeownership gap. The specific outcome and product Director Thompson wants remains unclear. While on a longer track, we anticipate some changes through rulemaking to the FHLB regulatory framework. We may also see Director Thompson make recommendations to Congress to adjust the Federal Home Loan Bank Act – perhaps around issues related to categories of eligible members.

### **Securities and Exchange Commission (SEC)**

The SEC is likely to propose an equity market structure rule this month — we understand that an open meeting to vote on the proposed rule will likely be held on December 14<sup>th</sup>. The proposed rule is expected to cover a broad range of equity market structure issues, including payment for order flow, exchange rebates and access fees, order-by-order competition, tick sizes, best execution, and National Best Bid and Offer (NBBO).