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## February 2023 Outlook

February 1, 2023

<p><b>OVERVIEW</b></p>	<p>Lawmakers returned to Washington this week and will officially kick off the work of the 118<sup>th</sup> Congress after nearly a month spent in an organizational period. With committee rosters and subcommittee assignments <i>nearly</i> official, we are looking forward to some semblance of normalcy over the coming weeks. That said, given the delayed start in committee operations, as well as a limited calendar, February will still be a relatively light month in terms of overall legislative activity as lawmakers continue to staff up and craft agendas.</p> <p>The House in particular will be working off a very limited legislative window – in town for just six days in the first half of February, as well as on the 27<sup>th</sup> and 28<sup>th</sup>. The Senate will be in Washington for most of the month, except for the week of February 20<sup>th</sup> for the President’s Day recess. Meanwhile, the President will deliver his 2<sup>nd</sup> State of the Union Address on February 7<sup>th</sup>. We do not anticipate any major surprises – Biden will tout his accomplishments (Inflation Reduction Act, CHIPS Act, Bipartisan Infrastructure Law); touch on pressing issues like the economy and the debt ceiling; call for action on more controversial issues like gun policy and police reform; and reiterate his key agenda items (climate change, consumer protection, racial equity), despite a clear understanding that Congress will largely remain in a stalemate for the foreseeable future on most of these items.</p> <p><b>Rules Package</b></p> <p>As we all know, the House passed a rules package on a largely party-line vote (220-213) last month following the prolonged Speaker race. While the package does not specify all of the various concessions made by McCarthy in securing his speaker election, it does make a number of changes to the Chamber’s operations. This includes, among other items, solidifying the single-member threshold for the motion to vacate; ending proxy voting in Congress; adding a commitment to vote on term limit legislation; and replacing the “PAYGO” rule with “CUTGO” to thwart tax hikes and federal spending without equal or greater offsets. These concessions will certainly complicate raising the debt ceiling, as we will see over the next several months.</p> <ul style="list-style-type: none"> <li>• The package also establishes new investigatory committees: the Select Subcommittee on the Weaponization of Federal Government, which will be led by Rep. Jordan (R-OH), with Rep. Plaskett (D-VI) as the top Democrat, and the Select Committee on the Strategic Competition between the U.S. and the Chinese Communist Party, to be led by Reps. Gallagher (R-WI) and Krishnamoorthi (D-IL). Reps. Luetkemeyer (MO), Barr (KY), and Torres (D-NY) will serve on the strategic competition Committee, bringing a financial services perspective.</li> </ul>
<p><b>CONGRESSIONAL ACTIVITY</b></p>	<p>While both Chambers continue to work through finalizing committee rosters and agendas, activity on the House floor commenced this week with votes on a number of measures and several hearings already on the docket. House Republicans wasted no time in beginning their oversight agenda, with plans to adopt a rule to expedite the subpoena process this week and the first investigatory hearing in the Judiciary Committee focused on the “Biden Border Crisis.” Meanwhile in the Senate, several hearings are slated with the most notable being the</p>

Agriculture Committee's first hearing to examine the 2023 Farm Bill (current authorization expires at the end of the current fiscal year). The Senate Energy & Natural Resources Committee, led by Sen. Manchin (D-WV), will also hold a hearing focused on the Department of Energy's implementation of the infrastructure bill.

- This week, the House already passed three bipartisan financial services-related bills. These focused on combatting the financial exploitation of seniors; streamlining federal credit union board meeting requirements; and identifying gaps small businesses in rural areas face when attempting to access capital. The House will also hold a vote on several pandemic-related bills that won't see bipartisan support, including proposals to officially end the national public health emergency (which Biden plans to let expire in May); require federal agencies to roll back telework policies; and prohibit vaccine mandates for health care workers.

### **Debt Ceiling**

Discussions around the debt ceiling have already ramped up and will continue to dominate the headlines over the next several months. As outlined in [RFA's Debt Ceiling State of Play](#), Congress will need to raise or suspend the debt ceiling by "X date" – the date on which the federal government can no longer meet its legal obligations, absent any action from Congress. Treasury Secretary Yellen has estimated an early June deadline (although this is subject to change), presumably giving Congress just four months, give or take, to work towards an agreement. While these negotiations have already begun to take place, including a critical meeting between President Biden and Speaker McCarthy (R-CA) that occurred today, we do not expect substantial progress on the issue to occur, or for either party to bow out on their current positioning this early in the year.

### **Committee Assignments**

After the Minority parties – Democrats in the House and Republicans in the Senate - took longer to finalize committee assignments, all appointments look to be completed this week, with the exception of some that are the subject of additional focus (and controversy). On the Senate side, we saw a series of musical chairs among Chairs and Ranking Members – these positions were announced in January – and while Majority Leader Schumer announced committee assignments for Democrats last week, after several delays, Republican rosters were released today. On the House side, the committees have been populated since last week, although Subcommittee Ranking Member assignments were delayed. Several notable changes to key committees are included below.

- **Senate Banking Committee**
  - On the Democratic side, freshman Sen. Fetterman (PA) has been added and Sen. Ossoff (GA) has departed.
  - Republican Sens. Britt (AL) and Vance (OH) have been added, and Sen. Moran (KS) has departed.
- **Senate Finance Committee:**
  - Republican Sens. Blackburn (TN), Tillis (NC) and Johnson (WI) were added. Note: Tillis forfeited his seat on Armed Services to hold positions on Banking, Finance and Judiciary.
  - There were no changes on the Democratic side.
- **House Financial Services**
  - **Republican Changes:** New members include Reps. De La Cruz (TX), Donalds (FL), Fitzgerald (WI), Flood (NE), Garbarino (NY), Houchin (IN), Kim (CA), Lawler (NY), Meuser (PA), Nunn (IA), and Ogles (TN). No active Republicans were removed.

	<ul style="list-style-type: none"> <li>○ <b>Democratic Changes:</b> Reps. Horsford (NV), Nickel (NC) and Pettersen (CO) were added. Notably, Reps. Adams (NC), Auchincloss (MA), Dean (PA), C. Garcia (IL) and Ocasio Cortez (NY) departed.</li> <li>● <b>Ways &amp; Means</b> <ul style="list-style-type: none"> <li>○ <b>Republican Changes:</b> Reps. Carey (OH), Feenstra (IA), Fischbach (MN), Fitzpatrick (PA), Malliotakis (NY), Moore (UT), Steel (CA), Steube (FL), Tenney (NY), and Van Dуйne (TX) were added.</li> <li>○ <b>Democratic Changes:</b> Departures include Reps. Boyle (PA), Gomez (CA), Horsford (NV), and Plaskett (VI). No new members were added.</li> </ul> </li> </ul>
<p><b>SENATE BANKING &amp; HOUSE FINANCIAL SERVICES COMMITTEE</b></p>	<p><b>Senate Banking Committee (SBC)</b> Given the delayed committee assignments, we expect a light hearing agenda in SBC this month. Several hearings we understand are being targeted for February and March, including a housing-focused hearing (likely to be the first out of the gate), a broad digital asset hearing with a significant focus on potential national security issues, as well as a hearing focused on outbound investments. Federal Reserve Chairman Powell is also slated to appear before SBC for his semi-annual Humphrey-Hawkins hearing the week of March 6<sup>th</sup>.</p> <p><b>House Financial Services Committee (HFSC)</b> The HFSC intends to kick off official business next week – and we believe early hearings provide an indication of where the Committee’s focus will be under Chairman McHenry’s (R-NC) leadership. They will begin with a full committee hearing on issues related to China, which will be a focus for the entire House. While we anticipate outbound investments to be a topic of discussion, this will not be the primary focus of the hearing. HFSC will also hold several legislative hearings at the subcommittee level on capital formation with the goal of marking up bipartisan proposals at some point in Q1, as well as a hearing on privacy and innovation in the banking sector. We also expect that Fed Chair Powell will appear before HFSC in early March following his appearance in SBC, and that there will be a full Committee hearing on digital asset-related issues. We expect that the capital formation proposals and privacy will be the first of McHenry’s major legislative proposals to be marked up.</p> <ul style="list-style-type: none"> <li>● <b>Subcommittee Chairs and Ranking Members</b> <ul style="list-style-type: none"> <li>○ <u>Capital Markets</u> – Wagner (R-MO); Sherman (D-CA)</li> <li>○ <u>Financial Institutions &amp; Monetary Policy</u> – Barr (R-KY); Foster (D-IL)</li> <li>○ <u>Digital Assets, Financial Technology &amp; Inclusion</u> – Hill (R-AR); Lynch (D-MA)</li> <li>○ <u>Nat’ Security, Illicit Finance &amp; Intl’ Financial Institutions</u> – Luetkemeyer (R-MO); Beatty (D-OH)</li> <li>○ <u>Oversight &amp; Investigations</u> – Huizenga (R-MI); Green (D-TX)</li> <li>○ <u>Housing &amp; Insurance</u> – Davidson (R-OH); Cleaver (D-MO)</li> </ul> </li> </ul>
<p><b>REGULATORY ACTIVITY</b></p>	<p><b>Treasury/FSOC</b> Coming off the heels of a noteworthy announcement from FSOC late last year regarding its plans to consider revising its activities-based approach for nonbank supervision, we still understand this effort remains at the staff level and will be a longer-term process without swift action or substantial change in the near-term. We anticipate FSOC will schedule its first meeting of the year in late-February or early-March, and for Sec. Yellen to appear before Congress in her FSOC capacity at some point in late-Q1 or early-Q2. Treasury, in partnership with the IRS, is also focused on issuing additional guidance relating to Inflation Reduction Act implementation. This includes additional guidance addressing discrepancies related to the corporate alternative minimum tax and the stock repurchase excise tax.</p>

### Securities and Exchange Commission (SEC)

We expect the SEC to continue to propose additional rules in February, as Chairman Gensler prioritizes getting the bulk of his rulemaking agenda to the proposed rule stage. We expect the SEC to propose a rule amending the Rule 12(g) definition of securities “held of record” this month. We also expect additional movement on a proposed rule mandating human capital management disclosures, and potential movement on a rule to modernize custody rules for investment advisers.

Last month, the OIRA Unified Agenda was released and included adjusted timelines for certain rules that did not see action in line with the Spring 2022 proposed agenda, as well as a few additions. Notable changes to the Reg Flex agenda include:

- Plans to address several rules that did not ultimately see action at all last year, including disclosures for human capital (April 2023) and corporate board diversity (October 2023).
- Significant proposals that did not meet the initial 2022 finalization goal, including the climate risk and cybersecurity disclosure rules, both now have April 2023 target dates. We still anticipate meeting this timeline will be a stretch, particularly the climate rule.
- Several notable proposals were kicked back from April to October 2023 including Loan or Borrowing of Securities reporting and Short Sale Disclosure reforms.
- The one particularly substantive addition to the agenda is the “Clearing Agency Recovery and Wind-Down,” which indicates the Division is considering recommending the SEC propose rules to expand requirements regarding recovery and wind-down plans to revise certain risk management requirements in Rule 17Ad-22 for clearing agencies. A proposed rule is expected in April 2023.
- Other additions include proposals to enhance the EDGAR Filing System; update the SEC’s Privacy Act regulations; and amend the SEC’s Rules of Practice, including with respect to service of SEC Orders Instituting Proceedings (OIPs).

### Other Notable Activity

- **CFPB:** A proposal issued this morning seeking to curb credit card late fees is another pillar of Director Chopra’s plan to target “junk fees” in the financial sector. The comment period will remain open for the later of 30 days following publication in the Federal Register or April 3<sup>rd</sup>.
- **CFTC:** Commissioner Pham will hold a Global Markets Advisory Committee Meeting on February 13<sup>th</sup> – the first under Pham’s leadership and the first GMAC meeting since Oct. 2021. While the meeting will be somewhat organizational – including the formation of new subcommittees and welcoming of new members – agenda items include topics relating to global market structure and digital asset markets.
  - **IOSCO:** A revised version of the 2011 Principles for Regulation and Supervision of Commodity Derivative Markets has been published by the Board of the International Organization of Securities Commissions. Revising these Principles aims to ensure that commodity derivatives markets remain regulated and overseen resiliently. The 24 revised Principles are designed to encourage the physical commodity derivatives markets to perform their fundamental price discovery and hedging functions without being subject to manipulation or abusive trading practices.
- **FTC:** The controversial recently issued proposal from the Federal Trade Commission to ban, with very limited exceptions, non-compete clauses is undergoing public comment through March 10<sup>th</sup>. The rulemaking effort is in line with the President’s

competition agenda released last year. We expect significant pushback from industry both through comment letters and forthcoming litigation.

- **DOL:** The Labor Department's final rule to allow retirement plan fiduciaries to consider ESG-related factors went into effect on Jan. 30<sup>th</sup> and saw an immediate attempt from Congressional Republicans (and Democrat Sen. Manchin) to nullify the rule using a Congressional Review Act measure. The President will ultimately veto any such effort, but the move opens the door for additional scrutiny and legal disputes (including challenges from at least 25 states). We also expect to see a revised DOL Fiduciary Rule in early 2023, although likely not as early as February.
- **Cyber:** We continue to hear the President's national cybersecurity strategy is in the final stages of review and is set to be released in Q1, ahead of Chris Inglis's anticipated departure from the Office of the National Cyber Director.
- **Housing:** Federal housing regulators have been considering implementing nationwide rent control through executive action (although such a plan may face serious practical and legal challenges). Last week, the White House released a Blueprint for a Renters Bill of Rights that lists a wide range of actions federal agencies are taking or considering to "strengthen tenant protections and encourage rental affordability." One of the most interesting proposals is an announcement that the Federal Housing Finance Agency (FHFA) will explore ways to limit egregious rent increases at properties with Fannie- or Freddie-backed mortgages in the future.