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Fall Policy Priorities Preview

September 5, 2023

OVERVIEW	The Senate returns to Washington this week with a long to-do list, with a main focus on the September 30th deadline to avoid a government shutdown, but also the need to address national defense funding and reauthorize multiple other programs facing expiration. The House doesn't return until next week, leaving just 12 days when both chambers are scheduled to be in Washington this month. Prior to the August recess, both chambers were making progress on some of these must-pass items, including the passage of appropriations bills by the respective committees in the House and Senate, as well as each chamber's version of the National Defense Authorization Act (NDAA). The appropriations negotiations will bring into focus promises made by House Speaker McCarthy (R-CA) during his campaign to be Speaker of the House and again in late May when working to pass the deal to suspend the debt ceiling. For a third time this year, he will have to navigate the competing demands from all corners of the House Republican caucus, while also engaging with Senate Majority Leader Schumer (D-NY) and the White House. On the election front, special primaries will take place Tuesday, September 5, in Rhode Island and Utah to fill two House vacancies. Former Rep. David Cicilline (D) stepped down in June to lead a foundation. The winner of the primary will likely be elected to the House in November's general election. While in the Republican-leaning 2nd District of Utah, voters will choose candidates to succeed Rep. Chris Stewart (R), who plans to leave the seat this month. Also, the second GOP Presidential debate is on September 27th with heightened qualification standards. Beyond September, we provide a preview of various other topics we expect to be prioritized on Capitol Hill and by the Administration for the remainder of 2023. Among other things, this includes a busy hearing schedule for both the Senate Banking Committee (SBC) and the House Financial Services Committee (HFSC), Federal Reserve nominations in the Senate, and multiple efforts focused on China following the focus on outbound investment in the Senate NDAA and President Biden's Executive Order (EO).
OUR VIEW	September will be a sprint, headlined by government funding deliberations, with many other relevant negotiations occurring simultaneously behind the scenes. While the exact length of a short-term extension is not known, we do expect extension into mid-November or early December to allow time to complete the FY2024 appropriations process without triggering the one percent discretionary cuts included in the debt ceiling deal – the Fiscal Responsibility Act (FRA). As we approach the end of the month, we expect more clarity on these negotiations, as well as whether any one group withholds support and is willing to allow a government shutdown to advance their priorities. Beyond funding the government, the historic bipartisan nature of the NDAA will likely prevail in the conference process allowing it to advance without a lapse, while the busy September schedule will likely require additional short-term reauthorizations for various other programs.

APPROPRIATIONS	**Appropriations and Government Funding** The main event for the month of September will be the appropriations process. Following the passage of the FRA in May, the debt ceiling was raised, discretionary spending levels were established for FY24 and FY25, and there will be automatic 1% cuts implemented if Congress elects to use a CR beyond the end of the year. Additionally, it seems that both parties' leadership have acknowledged the reality that the September work period is not enough time to complete the appropriations process. Even with these items seemingly already agreed upon, we expect that it will come down to the wire with another government shutdown very much in play. To date, the House and Senate Appropriations Committees have taken different approaches toward crafting the 12 funding bills. The Senate has been working on its appropriations bills largely in line with the FRA caps, while the House has been targeting lower levels of spending, closer to FY22 levels to win support of those who thought the FRA did not do enough to curtail spending. The Senate, having passed all 12 funding bills through its Appropriations Committee with bipartisan support, is expected this month to work on advancing the FY24 spending measures that have the most bipartisan support, including Agriculture-FDA and Military Construction-Veterans Affairs bills. The House Appropriations Committee has approved 10 of the funding measure through full committee and two bills have advanced through the subcommittees and are awaiting full committee consideration. The House Military Construction-VA appropriations bill was passed by the full House in late July. The real question for September is how long the short-term CR will be and what provisions Members will work to have included. Speaker McCarthy is telling House members that he will not support a CR that aligns with the end of the calendar year. Recalling the animosity of House Republicans with the 2022 end of year Omnibus, Speaker McCarthy is loath to enact an Omnibus in 2023. As a result, he is currently discussing two ideas: (1) a CR of shorter-term duration; or (2) a CR until some point in Q1 2024. Majority Leader Schumer is also in support of passing a stopgap spending bill in late September, so we view this as the most likely pathway to avoid a government shutdown that would start on October 1st. While the debt limit deal (FRA) technically triggers 1% cuts to all discretionary spending if Congress relies on a stopgap measure to fund any portion of the government beyond December 31st, the cuts are not effective until April 30, 2024, therefore keeping a CR until early 2024 on the table. However, the House Freedom Caucus said in a statement that it would oppose a "clean" stopgap bill that continues current spending levels and policies that the group opposes. The group also wants policy changes in the CR, such as the inclusion of Republican border-security legislation and language to address "the unprecedented weaponization of the Justice Department and the FBI," both of which will be non-starters for Democrats. We anticipate a negotiated CR extending into mid-November or early December. While Speaker McCarthy has already notified his Members of the need for a short-term measure, it may prove easier said than done as he faces demands from his right flank, allowing Democrats to watch patiently as Republicans navigate competing political pressures to try and avoid a government shutdown.
OTHER SEPTEMBER 30TH DEADLINE ITEMS	**NDAA** The National Defense Authorization Act (NDAA) is the annual budget and authorization bill related to the financing of the US Department of Defense (DOD) and all major national security priorities. This expansive legislation is often viewed as a must-pass and has enjoyed bipartisan support for more than 60 consecutive years. In July, the House and Senate passed their respective versions of the FY24 NDAA and will look to reconcile the differences as Members return this month. Of the various provisions and differences between the two packages that will have to be reconciled, there is a significant outbound investment provision in the Senate version that will receive attention, particularly on the heels of President Biden's Executive Order on the topic.

The Outbound Investment Transparency Act (OITA) was attached to the Senate NDAA by an overwhelming bipartisan vote of 91-6 and has many similarities to the Administration's EO while covering more countries and technologies. Full details on these can be found in RFA's China Investment and Competition State-of-Play. We expect this amendment will face scrutiny during the conference process from some House Republicans who prefer an alternative, sanctions driven approach. That said, the amendment was already narrowed in scope from the original proposal put forth by Sen. Cornyn (R-TX) and Sen. Casey (D-PA) and the strong bipartisan vote will be hard to overcome without a strong alternative with similar support across the board.

Also of note, the Senate NDAA included an amendment offered by Senators Lummis (R-WY), Gillibrand (D-NY), Marshall (R-KS), and Warren (D-MA) aimed at preventing illicit crypto activity. The amendment requires financial regulators to set examination standards for financial institutions engaging in crypto related activities and requires the Treasury Department to submit recommendations to Congress regarding "mixers" and other anonymity enhancing tools. We think this language will ultimately remain in the final bill and become law.

The other major issues standing in the way of extending the NDAA's bipartisan streak for a 63rd year are provisions related to social issues, such as abortion restrictions, transgender health care access and diversity, included in the House passed NDAA. Ultimately, we expect that these will be negotiated and diluted or removed, leading the Democratic controlled Senate to advance the final form of the bill. However, any concessions will present another point of criticism of Speaker McCarthy from the Freedom Caucus members of his caucus.

Farm Bill

The Farm Bill, which is the multi-year spending bill that governs a variety of programs related to agriculture, conservation, research, food and more, is also up for reauthorization at the end of September. Projections suggest that this could be the first Farm Bill to exceed $1 trillion, representing a major legislative package working alongside the headline grabbing funding negotiations. With economic and supply chain related changes since the 2018 Farm Bill, there is bipartisan agreement that this package will need to address rising production costs impacting America's food supply. In addition, there will be other items with less bipartisan agreement, including provisions related to the Supplemental Nutrition Assistance Program (SNAP), which has more than 40 million Americans currently enrolled and represents the largest portion of the Farm Bill. Other debates will focus on conservation and climate related funds earmarked by the Inflation Reduction Act. Senate Agriculture Committee Chairwoman Stabenow (D-MI) has already acknowledged that the September 30th deadline likely won't be met and is instead looking to the end of the calendar year for reauthorization, as more farm policy issues will be impacted on January 1st. House Agriculture Committee Chair Thompson (R-PA) also has raised the prospects of his committee taking up a short-term extension to buy more time.

Flood Insurance Reauthorization

While the Farm Bill often benefits from bipartisan consensus and the certainty that comes with consistent 5-year extensions, the National Flood Insurance Program (NFIP) is a different story. The last multi-year reauthorization of the NFIP expired in September 2017 and since has undergone 21 short-term extensions, including three brief lapses. Long-term reauthorizations of the program have often been held up by modernization and reform debates that do not follow the typical partisan divide. Instead, flood insurance priorities are heavily influenced by the prominence of flood risk in each Member's district.

In the absence of Congressional action, in 2019 FEMA attempted to modernize its pricing methodology through a new system called Risk Rating 2.0. This was intended to modernize the industry through the incorporation of industry best practices and technology into its models to better reflect an individual property's actual flood risk. While there has been support for Risk Rating 2.0 as a "step in the right direction," reports have indicated that the program has caused

	premiums to increase for millions of homeowners and is making required flood insurance for many properties unaffordable. While the SBC and HFSC have held hearings on the reauthorization of the NFIP and both parties have expressed interest in long-term extension, competing priorities between shielding homeowners from significant premium increases and ensuring the program is fiscally stable have stalled efforts. Various proposals for extensions ranging from 1 to 5 years have been put forward and we expect the SBC to hold another hearing on the topic in late September. However, given the challenging policy interests and the competing Congressional priorities already mentioned for September, the NFIP seems to be heading for another short-term extension. **FAA Reauthorization** Another necessary reauthorization with significant implications if not addressed in time is the reauthorization of the Federal Aviation Administration (FAA). Congress initially seemed to be on a glide-path towards reauthorization before provisions seeking to address the shortage of pilots were proposed as amendments to the bipartisan proposal. The House passed its 5-year reauthorization proposal, *The Securing Robust Leadership in Aviation Act*, in July with a vote of 351-69. It included a provision to allow for an increase in required flight hours that can be completed on a simulator, as well as lifting the mandatory retirement age for pilots from 65 to 67. However, the Senate process has been delayed as members debate how to best balance safety concerns with demand for new pilots, primarily through flight hours provisions. **Health Care Program Reauthorizations** September 30th is also the reauthorization deadline for multiple health care programs. These programs include the Community Health Centers Fund, the Pandemic Preparedness Office, Global AIDS funding, initiatives dealing with opioid use disorder, health workforce training, and others. Both chambers have proposed reauthorizations for these various programs, however there are differences that will have to be resolved. The House passed a bipartisan package to reauthorize some of these programs, and Senate Health, Education, Labor and Pensions (HELP) Committee Ranking Member Cassidy (R-LA) introduced a similar version in the Senate. However, HELP Committee Chair Sanders (I-VT) has his own five-year extension with larger increases for the programs. Many of these programs have traditionally enjoyed bipartisan support, but that doesn't rule out the possibility for a short-term extension package to allow more time to negotiate some of the remaining differences prior to a longer-term reauthorization. Beyond these reauthorizations, congressional committees have also passed a set of bills outlining reforms for Pharmacy Benefit Managers (PBMs), potentially paving the way for a more extensive reform package in the fall. This aligns with Majority Leader Schumer's commitment to moving forward on several health-related efforts, including advancing bills that would lower the cost of insulin and prescription drugs when lawmakers return from August recess.
REMAINDER OF YEAR CONGRESSIONAL PRIORITIES	**China Competitiveness Package** Majority Leader Schumer has expressed a desire to pass follow-up legislation to the CHIPS and Science Act (covered further here) that incorporates bipartisan priorities not included in the first legislation. In May, Leader Schumer directed Senate Committee Chairs to begin working with their Ranking Members on another bipartisan China competition bill. That said, no substantive discussions on legislation have taken place and it does not appear likely that lawmakers will be able to construct such a package this fall or in the near future without a catalyzing event. **Artificial Intelligence (AI)** AI will continue to receive significant focus on Capitol Hill and across the Administration. Related provisions were included in the NDAA and a variety of other one-off proposals have been introduced. Majority Leader Schumer has also stepped up on this issue. In June, he released the SAFE Innovation for AI Framework, which is intended to jumpstart the legislative process related to regulating AI. More recently, he announced a series of nine AI insight forums for the

	Fall to continue to inform Senators on the topic and advance the legislative process. We also expect there to be a regular cadence of hearings on AI across a number of committees of jurisdiction. The House Financial Services Subcommittee on Digital Assets, Financial Technology and Inclusion will likely take up the topic now that they've passed comprehensive legislation on digital assets and stablecoins. Additionally, the SBC is expected to hold a hearing on AI this month. Regarding broader AI policy, we anticipate that any China Competitiveness package would likely address AI in some capacity, especially since the original Senate-passed United States Innovation and Competition Act of 2021 heavily discussed the emerging technology. While a comprehensive AI package before the end of the year may be overly ambitious, we anticipate Congressional and Administrative efforts to continue wherever AI is incorporated. This includes SEC rulemaking related to broker-dealers and investment advisers use of predictive data analytics and similar technologies like AI, as well as CFPB concerns about discrimination perpetuated by similar technologies showing up in a proposed home appraisal rule and often being mentioned in Director Chopra's public comments. See RFA's most recent AI update for more on the topic. **Tax Extenders / Tax Package** In June, the Republican-led House Ways & Means (W&M) Committee passed its tax package for the year, a series of three bills that includes tax breaks for businesses and changes to some clean energy tax credits, among other things. The bill has not been taken up for a full House vote. The economic tax package reported out of W&M included three bills, the Build It In America Act, which has a variety of business-favorable tax changes, the Small Business Jobs Act, which also has favorable tax changes for primarily small businesses, and the Tax Cuts for Working Families Act, which purports to help working families by cutting their taxes. Much of the tax breaks included in the 2017 Tax Cuts and Jobs Act (TCJA), led by former President Trump, are set to expire in 2025, which is pushing Congress to act on their future, with a clear partisan divide amongst lawmakers. Republican tax-writers are interested in a clean extension of the expiring TCJA tax cuts, particularly income tax rates, although some Republicans have an interest to expand or remodel them altogether. Democratic members are strongly opposed to the GOP-led tax cuts but are measured in how they talk about any repeal, aware that Republicans could use such plans as Democratic support for a tax hike leading into the 2024 elections. There have also been increased bipartisan talks on a potential tax deal before the election that would trade some corporate tax breaks for an expansion of the child tax credit, which is also set to decrease in 2025. **Dual Routing / Credit Card Competitiveness Act** The Credit Card Competition Act of 2023 (CCCA) (S. 1838), legislation sponsored by Sens. Durbin (D-IL) and Marshall (R-KS), seeks to change the credit card interchange system by requiring Visa and Mastercard to accept unaffiliated payment networks for processing credit card payments. The reintroduction of the bill and the increase in support from lawmakers this year have been met with significant opposition from the large card companies and banks. Sen. Durbin has long-pushed for this bill without success, but the latest version has found several Republican cosponsors, including Sen. Vance (R-OH) – a populist Republican on the SBC, who allied himself with Chair Brown (D-OH) and Sen. Warren (D-MA) on the RECOUP Act. After a failed effort to have the CCCA included in the NDAA, Sen. Marshall said he and Sen. Durbin were "given assurances" that a vote on the CCCA will occur during this session of Congress. We expect the supportive Senators to look for other must-pass legislative priorities this fall to hold Senate leadership to this promise. However, given the still-lacking level of support from both sides of the aisle, a divided Congress, and increased opposition efforts by the industry, we believe the chances of CCCA's inclusion in any of the legislative-vehicles are slim.

	China Outbound Investment Alternative Instead of the required notice of covered investments that would be required by the OITA amendment included in the Senate NDAA, some House Republicans support an alternative focused on utilization of sanctions and export controls to achieve similar national security goals as it relates to China. Rep. Barr (R-KY) has been pitching his colleagues on an alternative proposal that builds on the Chinese Military and Surveillance Company Sanctions Act of 2023 (H.R. 760). We anticipate this new version to be introduced when the House returns to DC in early September. Rep Barr's stated goal with this legislation is to expand the government's ability to blacklist individual Chinese firms, blocking their access to US capital, while avoiding the creation of a new government notice or review function. Rep. Barr seems to have the support of HFSC Chair McHenry (R-NC) and House Foreign Affairs Committee (HFAC) Chair McCaul. When the House returns next week, we expect Rep. Barr to introduce his new bill and seek to have it marked up by the HFSC while simultaneously pushing for consideration in the NDAA conference process. We ultimately expect OITA will be the prevailing outbound investment provision in the NDAA and Rep. Barr will turn his focus to advancing his proposal through the House and finding sympathetic Senators willing to introduce a Senate companion. **Fed Nominees** The Senate is expected to vote on confirming the three Federal Reserve nominees – Philip Jefferson to be Fed Vice Chair, Adriana Kugler as a Fed Governor and Lisa Cook for an additional full term as a Fed Governor – when it returns. Jefferson's nomination was approved by the SBC with unanimous support, while Cook and Kuegler both saw 13-10 votes with only one Republican voting in their favor. We expect all three nominees to advance out of the Senate, with Governor Jefferson receiving more bipartisan support than the other two nominees. **RECOUP Act** After a 21-2 vote out of the SBC in June, Chair Brown will be looking for an opportunity to move the Recovering Executive Compensation Obtained from Unaccountable Practices (RECOUP) Act (S. 2190) on the Senate floor. However, there remain issues and concerns that need to be resolved – such as strong objections by some Republican Senators – before this bill is considered by the full Senate. It is likely that Chair Brown and Senate Leadership are still discussing the logistics of Senate floor time and an amendment process to bring this up for a vote, knowing multiple Senate Republicans will work to obstruct its passage. This is before any consideration is given to what it would take to advance this legislation through the House, which would likely prove more challenging than finding 60 votes in the Senate. **SAFE Banking Act** The Secure and Fair Enforcement (SAFE) Banking Act (S. 1323) has been a topic of discussion for many years now and has seen a steady increase in bipartisan support, largely in line with broader trends related to state level marijuana legalization decisions. The bill would prohibit federal regulators from terminating or limiting either deposit or share insurance of financial institutions solely for doing business with legal cannabis companies – effectively a safe harbor for these banks. The SAFE Banking Act is designed to address the problem of cannabis companies operating in states that have legalized marijuana being unable to access financial services from banks due to the federal prohibition. The bill was reintroduced this Spring. A summary of the Senate bill can be found here. While the SAFE Banking Act has been passed by the House seven times, supporters had hoped that this would be the year it would get a vote in the Senate. SBC Chair Brown has expressed his interest in marking up the bill at multiple points and in a July Dear Colleague letter, Majority Leader Schumer cited the SAFE Banking Act as a top priority of his. However, progress needs to be made on resolving an impasse that has kept the bill from moving forward. Specifically, Sen. Reed (D-RI) has pushed for removal or narrowing of language added by Republicans in the House several years ago that he believes would make it more difficult for federal regulators to

	raise concerns about risky customers and businesses in areas outside of just cannabis. Republicans have so far objected to changing this language. On the other side of the aisle, Chair Brown has voiced the need for Sen. Daines (R-MT), the Republican sponsor of the bill, to shore up more GOP support before a potential markup and eventual floor consideration. The final point of contention is how to address concerns from Democrats who want to expand legislation to cover expungements for non-violent cannabis offenders. The addition of any such provisions would likely cause issues for Republicans who may already be on the fence. A markup this fall is still possible, but the interested parties will need to come to an agreement on these issues first.
SENATE BANKING COMMITTEE & HOUSE FINANCIAL SERVICES COMMITTEE	**Senate Banking Committee** There is a lot up in the air for the SBC this fall. We do expect Chair Gensler to come before the committee in early September, where he will hear from both sides about the pace and focus of the SEC's rulemaking efforts. The committee will hold a broad insurance hearing, that among other things will cover climate related impacts on the industry and access and affordability, with the possibility for a flood insurance hearing later in the month. An AI hearing has also been discussed, which could serve as a marker for financial services priorities in any AI regulatory package. Looking ahead to October and early November, the SBC has begun planning for another hearing with global systemically important bank (G-SIB) CEO's. Other potential hearing topics include junk fees, housing supply, the effects of climate change on the banking industry, and the accessibility of financial services for marginalized communities. • September 7th: Full Committee hearing entitled, "Perspectives on Challenges in the Property Insurance Market and the Impact on Consumers" • September 12th: Full Committee hearing with SEC Chairman Gensler • Week of October 30th (*tentative*): G-SIB CEO Hearing As far as legislative priorities, we expect Chair Brown to continue to work with Senate leadership to negotiate a time for the RECOUP Act to receive Senate floor time. Additionally, Chair Brown would still like to mark-up the SAFE Banking Act this fall, however progress needs to be made on resolving an impasse that has kept the bill from moving forward. **House Financial Services Committee** While the full agenda for the HFSC for the remainder of 2023 is not yet known, we do anticipate a busy three weeks of September hearings. Following the Senate and Administration's actions on China outbound investment, the committee will focus on national security, CFIUS, and outbound investment, to respond to these proposals while simultaneously giving Rep. Barr a forum to build support for his new sanctions-based proposal. We also expect the Capital Markets Subcommittee to hold a hearing with the SEC Division of Investment Management ahead of a full committee hearing with SEC Chair Gensler. Other anticipated hearing topics include capital rules, Basel endgame, bank stress testing, and a pivot to a broader focus on fintech, including CBDCs, following the passage of the stablecoin legislation by the committee before the August recess. Oversight hearings focused on the CFPB, the Department of Housing and Urban Development and the Federal Housing Finance Agency later in the fall are also possible. • September 13th: Full Committee Hearing on CFIUS • September 14th: Financial Institutions Subcommittee Hearing on Basel III Endgame • September 14th: Digital Assets Subcommittee Hearing on CBDC • September 19th: Capital Markets Subcommittee Hearing with SEC Division of Investment Management • September 19th: Financial Institutions Subcommittee Hearing on Fed's proposals i.e. living will, long-term debt proposals • September 20th: Full Committee Markup on National Security/FinCEN • September 27th: Full Committee Hearing with SEC Chairman Gensler

	Beyond hearings, we do anticipate the HFSC to markup a Congressional Review Act (CRA) measure related to the CFPB's Section 1071 rule and Rep. Barr's outbound investment bill. Additionally, Chair McHenry would probably like to secure votes on the House floor for the bills voted out of committee in July, including the approved digital payments legislation, *Clarity for Payment Stablecoins Act*. However, it doesn't seem that these will be immediate priorities for House leadership given the must-pass items combined with a lack of familiarity with stablecoin and related digital currency policy issues for the broader House membership. We anticipate that the earliest these bills could come up would be October.
SENATE FINANCE COMMITTEE AND HOUSE WAYS AND MEANS COMMITTEE	**Senate Finance Committee** Coming off the heels of President Biden signing the United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act, the Senate Finance Committee is planning to take up bipartisan legislation to strengthen the tax relationship between the U.S. and Taiwan. We also expect a hearing on the nomination of Marjorie Rollinson as Chief Counsel for the IRS. **House Ways and Means Committee** The Ways and Means Committee Republicans will continue to pursue their oversight agenda on Hunter Biden once they return in September. Government funding will be taking a lot of the oxygen and bandwidth of the entire conference; Expect its effects to hit the Committee agenda. The Chairman's priority is to continue to find a pathway forward on the House floor for the jobs package the Committee reported in June. Members concerned with the SALT deduction have also been engaging with the Chairman and his team to attempt to find a pathway forward. While the locations and subjects are still being determined, we expect more field hearings this fall to highlight other tax and trade policies.
REMAINDER OF YEAR ADMINISTRATION PRIORITIES	**China Outbound Investment Rulemaking** On August 9th, President Biden issued an Executive Order (EO) focused on outbound investments to China in an effort to address national security concerns. What some have referred to as "reverse CFIUS," this proposal was framed as a "small yard, high fence" approach intended to complement existing export controls and inbound investment screening tools (CFIUS). The order will prevent US investments into semiconductors and microelectronics, quantum information technologies, and artificial intelligence sectors, with the intent of preventing US capital from supporting China's military ambitions and threatening US national security. Full details can be found in RFA's recent overview on China Outbound Investment. Following this EO, the Department of the Treasury (Treasury) began the rulemaking process with the issuance of an ANPRM to solicit public comment on the rule and address specific questions. Additionally, Commerce Secretary Raimondo just completed a trip to China, where she tried to reinforce the Administration's efforts to protect national security by targeting investments in sensitive industries covered by the EO, without discouraging investment in China completely. She also called for "concrete actions to enhance predictability, due process, and a level playing field" for American companies in China. The public comment process will close on September 28, 2023, after which, the Treasury will evaluate the public comments received and work through any necessary modifications before issuing a Notice of Proposed Rulemaking, that will be much closer to final form and allow for another round of comments. While initial industry reactions were largely subdued, we believe this was to avoid an overly inflammatory reaction, given the political sentiment towards China, while thoroughly evaluating the details of the proposal. We expect that impacted industries will provide thoughtful commentary that could lead to tweaks in the proposal. A final rule should not be expected to take effect for several months. **Prudential Regulators** On July 27, 2023, the Federal Reserve Board (FRB), Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC) proposed Basel endgame rules and

	capital surcharge adjustments for global systemically important banks (GSIBs). While affected firms are still determining the potential impacts of the 1,087 page proposal, banking regulator's estimates suggest that the proposal will increase capital requirements for banks. Another noted aspect of the proposal is the gold-plating of banks' risk weights for residential real estate and retail credit exposures. Comments on the proposal will be accepted through November 30, 2023. Under the proposal, the three-year phase-in period would begin in July 2025 and be fully implemented by July 1, 2028. On August 29, 2023, the FRB, OCC and FDIC issued a proposal to impose a long-term debt requirement on large banks with total assets of $100 billion or more. The proposal would prohibit large banks from engaging in certain activities that could complicate their resolution and would disincentivize these banks from holding long-term debt issued by other banks to reduce interconnectedness and contagion in the banking system. The proposal states that it is not meant to apply to GSIBs. The proposal contains a three-year phase in period. Comments are due November 30, 2023. Moreover, the prudential regulators issued a proposal imposing new resolution requirements on banks with more than $100 billion in assets. The guidance is organized around key areas such as capital, liquidity, and operational capabilities that could be needed in resolution. The proposed guidance is applicable to both single point of entry and multiple point of entry resolution strategies. The proposal also suggests information filing requirements for insured depository institutions with at least $50 billion but less than $100 billion in total assets. Comments are due by November 30, 2023. Additionally, at its August 29, 2023, meeting, the FDIC proposed guidance for Dodd-Frank Act resolution plan submissions for triennial full filers and advanced a proposal relating to receivership delegation of authority and procedures. A proposal put forward by Director McKernan to require a majority of the FDIC Board to vote in favor of approving any future sale of a failed bank with assets of at least $50 billion was considered and not adopted. Efforts are ongoing regarding the prudential regulator's joint proposal to modernize the Community Reinvestment Act (CRA). Comments on the proposal were due on August 5th, we will gain a better understanding of how the collective regulators respond to the feedback in the months ahead. The HFSC may also examine this proposal through a congressional hearing. Finally, the Federal Financial Institutions Examination Council (FFIEC) updated sections of the FFIEC Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual. We expect that many of the regulatory proposals issued over the last several weeks will be topics of Congressional inquiry. Moving forward, we expect that the prudential regulators – led by the Federal Reserve – will look to implement additional recommendations from Vice Chairman Barr's May 2023 report on the Supervision and Regulation of Silicon Valley Bank. Specifically, given the report's attention on liquidity, we'd expect the FRB to consider applying standardized liquidity requirements to a broader set of firms and will likely revisit the applicability of the Net Stable Funding Ratio and the Liquidity Coverage Ratio. **Securities and Exchange Commission** While Congress was out of town during recess, the SEC continued its aggressive pace of rulemaking. The SEC adopted two rules this month during an open meeting, which included the highly anticipated Private Fund Advisers rule. While the final rule backed off some of the more contentious provisions included in the proposed rule, many remained intact and impacted business groups have already filed a lawsuit against the final rule.

As we head into the fall, the set of proposals where action is expected includes the highly debated Climate Disclosure rule, as well as the Investment Company Names Rule. Other rules that could be considered before the end of the year include amending the definition of "exchange" and subjecting more systems to Reg ATS, as well as amendments to Rule 14a-8 addressing the process for inclusion and exclusion of shareholder proposals. For further review of these proposals and many more currently in-process at the SEC, see RFA's recent SEC Rulemaking update.

Beyond the SEC's rulemaking agenda, as noted above, we expect Chair Gensler to appear before the SBC and HFSC in September where the aforementioned proposals are sure to be discussed.

Consumer Financial Protection Bureau

While the CFPB has yet to issue its Fall 2023 regulatory agenda, based on the spring agenda and comments from Director Chopra, we anticipate the CFPB will remain busy this fall—many of these rules are covered in more depth here. At a White House Roundtable on "data broker" practices, Director Chopra announced the CFPB's intention to expand the Fair Credit Reporting Act (FCRA) to cover data brokers. This follows a public inquiry on the issue back in March and we expect to see proposed alternatives being considered for a proposed rule this month. The CFPB is also expected to issue a final rule for credit card late fees this October, just one piece of the Administration's broader effort to address "junk fees." Industry participants and trade groups have already been outspoken about the proposed rule, so we can expect lawsuits from them arguing, among other concerns, that the CFPB violated the Administrative Procedure Act before finalizing. Another item to watch is the recently added potential larger participant rule for consumer payments markets, however that was an aggressive timeline, and we don't expect action from the CFPB on this front before the year's end. Another big-ticket item we are following from the CFPB is the release of CFPB Rule 1033 related to consumer access to financial records. Director Chopra and the regulatory agenda both anticipate a proposed rule on this front in October. Additionally, we are still awaiting further guidance on Earned Wage Access (EWA) products as the CFPB has acknowledged at various points a need to provide clarity on the issue, which likely will be done through a new advisory opinion. Lastly, the Bureau still includes pre-rule activity for overdraft fees and insufficient funds fees on the agenda with an anticipated timeline of November.

Beyond the CFPB's rulemaking agenda, this fall the Supreme Court will hear arguments beginning in October on the case challenging the CFPB's constitutionality. A ruling is not expected until next year, maybe not until June. In the meantime, we expect an increasing chorus from industry that all major CFPB rulemakings should be postponed until after their constitutionality decision is issued.

Treasury/FSOC

Treasury/ FSOC's comment period for its proposed analytical framework guidance and proposed guidance on entity designation closed on July 27th. We anticipate an extended review of the comments received from various nonbank sectors, and some common themes in the comment letters included criticism of FSOC's failure to consider costs and benefits, and failure to consider "likelihood of material financial distress." We still believe FSOC has a lengthy process to finalize the proposed guidance and expect completion very late 2023 or early 2024.

Additionally, the focus on addressing liquidity concerns as it relates to independent mortgage banks (IMBs) continues. In May, former Ginnie Mae President Ted Tozer published a piece suggesting that Ginnie Mae could relieve pressure on IMBs during times of stress by guaranteeing short-term IMB obligations. This is intended to ensure adequate financing and encourage banks to continue lending to IMBs. The FSOC has received updates from Treasury, FHFA, and Ginnie Mae representatives on "efforts to address financial stability risks related to nonbank mortgage servicers" at the April and July meetings.