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## December 2023 Outlook

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<p><b>OVERVIEW</b></p>	<p>Congress returned to town this week for what is expected to be a busy December work period, although, not as busy as previous years given the Fiscal Year 2024 appropriations deadline was punted to late January and early February. That said, negotiations and work on appropriations should continue this month. Additionally, Congress will likely finalize the Fiscal Year 2024 National Defense Authorization Act in the coming weeks, and negotiations regarding a supplemental aid package for Israel, Ukraine, and the Indo-Pacific, along with border security, have ramped up, with the goal to pass something before the year's end. Aside from the must-pass legislative items, Congress will keep busy with a regular cadence of Congressional hearings. The Big Bank CEOs are set to testify next week in front of the Senate Banking Committee and the House Financial Services Committee, which is still finalizing its hearing schedule, is expected to hold several hearings at the subcommittee level. All the while, agencies will continue to push their regulatory agendas. The SEC is expected to release their much-anticipated Climate Disclosure rule before the end of the year, and FSOC will likely publish its Annual Report this coming month, which could feature a section on artificial intelligence. Below, RFA provides our take on notable legislative, regulatory, and administrative activity for the upcoming December work period.</p>
<p><b>CONGRESSIONAL ACTIVITY</b></p>	<p>Congressional activity will be in full swing this coming month as the legislative branch works to complete a number of different priorities before the Christmas and New Year's recess. That said, we expect a quieter December given the FY24 appropriations process was punted into the new year. In a <a href="#">Dear Colleague Letter</a>, Senate Majority Leader Schumer (D-NY) outlined several issues the Senate must address before the year's end, including military promotions and a national security supplemental funding package for Ukraine, Israel, and the Indo-Pacific region. Leader Schumer intends to bring an Israel/Ukraine supplemental package to the Senate floor as soon as next week, but opposition still remains, particularly with House Republicans, who either don't want to see funding for Ukraine whatsoever or would like to pair funding with border policy. Furthermore, the Senate will continue to work to confirm a number of President Biden's judicial nominees to the federal bench and there may be a final push to pass children's data privacy legislation before 2024. Meanwhile, the House of Representatives will consider several bills on suspension and continue working through the Fiscal Year 2024 appropriations process. We also expect House members to introduce a Congressional Review Act (CRA) resolution on the SEC's Staff Accounting Bulletin 121 (SAB 121) as soon as this month.</p> <p>Additionally, we expect Congress to work on reauthorizing the Foreign Intelligence Surveillance Act (FISA) before it expires at the end of the year. House Intelligence Chair Turner (R-OH) released several proposals aimed at extending Section 702 of FISA last month, and we expect negotiations to continue in earnest as the deadline looms. Regarding artificial intelligence, Leader Schumer's AI insight forums will continue. The 7<sup>th</sup> insight forum on intellectual property took place earlier today. While the remaining two insight forums could take place in December, there is the possibility that they spill over into January 2024. We also expect the House Energy and Commerce Committee to hold another hearing on AI this month, which would be the fourth in a series of hearings focused on examining the role of AI across different sectors of the economy. E&amp;C Chair Rodgers (R-WA) is also likely to push for national data privacy and security standard</p>

legislation more aggressively in 2024, linking the urgency of passing the legislation with the rapid acceleration of AI. Data privacy legislation from the last Congress passed out of the House E&C with near unanimous support.

#### **FY24 Appropriations**

Last month's continuing resolution (CR) funded the government until early next year, and lawmakers must now work to reach an agreement to meet staggered January 19<sup>th</sup> and February 2<sup>nd</sup> deadlines. With more conservative House Republicans still not enthused about the November CR, Speaker Mike Johnson (R-LA) has insisted that he will not bring another "clean" funding stopgap bill to the floor, which could increase the chance of a government shutdown on the upcoming deadlines. Speaker Johnson's refusal to consider another clean CR creates angst amongst lawmakers, as this would impose a deadline upon both chambers of Congress to pass complete spending bills for the new fiscal year, which technically started on October 1<sup>st</sup>. While Congress still has over a month until the first of the two "laddered" shutdown deadlines, the looming winter recess limits the amount of time the House and Senate can resolve any differences between their respective appropriations bills. The CR passed in November funds Agriculture-FDA, Energy and Water, Military Construction-VA, and Transportation-HUD until January 19<sup>th</sup>, and funds Commerce-Justice-Science, Defense, Financial Services, Homeland Security, Interior-Environment, Labor-HHS-Education, Legislative Branch, and State-Foreign Operations until February 2<sup>nd</sup>. Senate appropriators face a challenging task in reconciling their spending priorities with the House GOP's proposed federal budget cuts.

#### **FY24 NDAA**

In addition to government funding, the House and Senate are concluding their negotiations for the annual defense authorization bill, which Speaker Johnson will likely bring to the House floor for a vote in the second week of December. RFA will continue to monitor several provisions that lawmakers have voiced support for, including stronger anti-money laundering regulation for cryptocurrencies. Earlier this year, Sen. Warren (D-MA), Sen. Gillibrand (D-NY), and Sen. Lummis (R-WY) successfully included an amendment into the Senate-passed NDAA that would require the Treasury Department to establish examination standards for digital assets and require a study on anonymous cryptocurrency transactions. We expect this language will likely be included in the final NDAA. Another provision RFA is closely monitoring is Sen. Cornyn (R-TX) and Sen. Casey's (D-PA) *Outbound Investment Transparency Act*, which was included as an amendment in the Senate-passed NDAA by an overwhelming vote of 91-6. It is unclear if the Cornyn/Casey amendment will be incorporated in the final version of the defense bill given HFSC Chair McHenry (R-NC) has concerns with the structure of the proposed outbound review mechanism. We expect the NDAA process to continue this month and for likely final passage to take place before Congress adjourns for Christmas.

#### **Nominations**

Tomorrow, the Senate Committee on Agriculture, Nutrition and Forestry will consider the renomination of Summer K. Mersinger as a Commissioner of the Commodity Futures Trading Commission (CFTC) for a term that would expire on April 13, 2028. Mersinger is likely to receive questions on an array of topics, such as the CFTC's oversight of the digital asset market. We expect her nomination to advance out of Committee and be swiftly confirmed by the full Senate. The Senate unanimously supported Commissioner Mersinger's nomination following her initial appointment. Additionally, the pending FTC nominees, Rebecca Slaughter, Melissa Holyoak, and Andrew Ferguson, who moved out of the Commerce Committee in October, could receive a vote on the full Senate floor this month.

#### **SENATE BANKING & HOUSE FINANCIAL**

#### **Senate Banking Committee**

The Senate Banking Committee has a light schedule for the rest of 2023, with one of the only two hearings left in its schedule happening this week. Tomorrow, **CFPB Director Chopra** will testify before the Committee. We expect to hear several questions on the CFPB's new 1033 rule and a potential announcement that the comment period for the new rule may be extended. On

<p><b>SERVICES COMMITTEE</b></p>	<p>December 6<sup>th</sup>, the Committee will hold an oversight hearing of the nation’s largest banks, featuring testimony from the chief executive officers of JPMorgan Chase, Bank of America, Citigroup, Goldman Sachs, Bank of New York Mellon, Morgan Stanley, State Street and Wells Fargo. Since the House Financial Services Committee does not plan to hold a similar hearing this month, there will likely be a lot of attention on this hearing and the testimonies that come from the bank executives. Notably, upon announcement of the session, Chair Brown called out large banks for continuing to “make record profits and reward corporations that raise prices on Americans.” The big bank CEOs will likely face questions on a number of different topics, such as the Basel III endgame, capital requirements and prudential regulation generally, and climate-related financial risk, among others. We expect that Republicans will focus their questioning on the cumulative impact of recent regulatory proposals.</p> <p><b>House Financial Services Committee</b> The House Financial Services Committee agenda has not been finalized yet, but after today’s hearing with <b>CFPB Director Chopra</b>, we expect HFSC to hold only subcommittee hearings for the rest of the year. On December 5<sup>th</sup>, the Subcommittee on Digital Assets, Financial Technology and Inclusion will hold a hearing entitled, “Fostering Financial Innovation: How Agencies Can Leverage Technology to Shape the Future of Financial Services.” The hearing will focus on innovation offices in each of the respective regulatory agencies. We expect Republicans will criticize the Biden Administration’s overall posture toward financial innovation and given the news about the OCC Fintech officer, we expect heavy criticism of the OCC. The Committee intends to call government witnesses. On December 6<sup>th</sup>, the Subcommittee on Housing and Insurance will hold a housing focused hearing. On December 12<sup>th</sup>, the National Security, Illicit Finance, and International Financial Institutions Subcommittee will hold a hearing on energy sanctions, where we expect ample discussion on the current Russian sanction’s regime, which targets Russia’s energy production and export capacity. Also on December 12<sup>th</sup>, the Subcommittee on Capital Markets will likely hold a hearing featuring witnesses from self-regulatory organizations. Finally, the Subcommittee on Oversight and Investigations will hold a hearing on December 13<sup>th</sup>, although a topic has not been decided on yet.</p>
<p><b>SENATE FINANCE AND HOUSE WAYS AND MEANS COMMITTEE</b></p>	<p><b>Senate Finance Committee</b> After processing Former Governor Martin O’Malley as the Commissioner for the SSA, the Finance Committee activity for the year is over. See below for end of year tax conversations.</p> <p><b>Ways and Means Committee</b> The Ways and Means Committee is holding a markup on a variety of bipartisan bills this week, but none are considered particularly groundbreaking. There is a chance for additional hearings this month, but topics have yet to be ironed out.</p> <p><b>End of Year Tax</b> W&amp;M Chair Smith (R-MO) and SFC Chair Wyden (D-OR) are having some conversations about a potential tax bill. Two considerations remain: how much should the package cost (and what are the offsets, if any); and what is the vehicle on which the bill would move. The renewed child tax credit is still a major point of contention. We expect to receive more clarity early in the month if a deal is possible, but the odds of a type of package coming together this late in the year are slim.</p>
<p><b>ADMIN AND REGULATORY</b></p>	<p><b>Biden Administration</b> The Administration will continue to fight so-called junk fees as it attempts to attribute the sustained trend of robust consumer spending to its "Bidenomics" campaign despite consumer dissatisfaction with the economy (and the branding). On Monday, the White House <a href="#">announced</a> the establishment of an advisory council on supply chain resilience to demonstrate this continued effort. The council will be overseen by Biden's national security and economic advisers and a newly appointed supply chain resilience coordinator.</p>

In response to the growing attention given to artificial intelligence within the federal government, more than a third of major federal agencies have designated chief AI officers (CAIOs) as part of the comprehensive A.I. executive order issued by the Biden administration. These officials are expected to have significant authority as they will promote artificial intelligence use and manage its associated risks. Here is [a list](#) of the current agency designations available for your reference.

Despite attending the summit during his first two years in office and promoting his green-energy achievements, President Biden has decided to skip the U.N. climate summit, COP28, which is set to begin in Dubai this week. According to senior White House aides, the president has been heavily involved in the recent war between Israel and Hamas, working towards a ceasefire and the release of hostages. That said, the Administration is expected to announce the EPA's landmark climate protection standards rule to curb oil and gas industry methane pollution, which will be the first significant Biden climate regulation to become final, on the sidelines of the U.N. climate talks later this week.

### **Prudential Regulators**

On November 21<sup>st</sup>, the Federal Deposit Insurance Corporation (“FDIC”) established a special committee of the Board to oversee an independent third-party review of the agency’s workplace culture. The Board appointed Directors **Jonathan McKernan** and **Michael J. Hsu** to co-chair this special committee. In our view, it is unlikely that FDIC will promulgate additional regulatory actions while this review is ongoing. We continue to expect the Federal Reserve Board (“FRB”) and the Office of the Comptroller of the Currency (“OCC”) to evaluate liquidity rules in the aftermath of the Silicon Valley Bank/Signature Bank failures earlier this year.

### **Securities and Exchange Commission**

We expect December to be one of the most active months in **Chair Gensler’s** tenure at the SEC. The SEC has already finalized 6 rules in the past 7 weeks, and we expect that pace to continue through the end of the year. Importantly, the SEC is likely to finalize the climate disclosure rule in December, with the open meeting to finalize this rule coming as early as December 11th. This is the most controversial rule the SEC has proposed during **Chair Gensler’s** tenure, and is certain to be challenged in court, so finalizing the rule will kickstart the litigation phase for this rule. In addition, the SEC could finalize the Treasury clearing rule and the “dealer” definition rule in December. The SEC continues to consult with the Fed and Treasury Department on these rules, and depending on how long those consultations take, finalization could be pushed to early 2024. Finally, we continue to hear that the SEC is getting close to finalizing the rule on outsourcing by investment advisers, so this rule could also come in December.

### **Consumer Financial Protection Bureau**

**CFPB Director Chopra** is testifying before Congress this week and will face two grueling, multi-hour hearings that are expected to cover a large waterfront of pending rulemakings. Top of mind is the pending Congressional Review Act resolution rescinding the rule to implement Section 1071 of the Dodd-Frank Act (small business data collection). The resolution passed the Senate mid-October and is scheduled for House floor consideration this Friday, December 1<sup>st</sup>. It is expected to pass the House and that the White House will veto the measure. After that, all eyes will be on if enough votes can be gathered to override the veto.

Other big items with looming deadlines Chopra expects to face at the hearings include: 1033 (comment period closes December 29<sup>th</sup>); the larger participant rule for general-use digital consumer payment applications (comment period closes January 8<sup>th</sup>); overdraft (expected in December); and a credit card late fees final rule (overdue possibly delayed until early 2024). All of this is against the backdrop of the ongoing Supreme Court case on the constitutionality of the Bureau’s funding structure and the turmoil at the FDIC, of which Chopra is a Director.

**Treasury/FSOC**

The Financial Stability Oversight Council (FSOC) will conduct its final meeting of 2023 during December. This meeting is traditionally when the FSOC Annual Report is voted on and released. The Annual Report, which looks at emerging risks and areas of concern, will be an important signal for how FSOC is viewing several categories of nonbank financial companies now that the Analytical Framework Guidance and Designation Guidance are finalized. At the time of this writing, the guidance documents have not been published in the Federal Register, so the 60-day effective clock has not yet begun to run.

In other parts of Treasury, work is underway to respond to the Executive Order on Artificial Intelligence. Treasury is directed to publish a report focused on financial sector adoption of the technology. Various teams are beginning to meet with private sector stakeholders, academics, and others to contribute to the report.