

RFA Monthly Outlook – January 2024

Overview

It’s crunch time in Washington D.C. as Congress gears up for a busy month following the holiday recess. The two headline items to address for January are government funding and the Ukraine-Israel supplemental package, which has become intertwined with U.S. border policy. Lawmakers are once again up against a limited time window to fund the government by January 19th or face a partial government shutdown. While Speaker Johnson (R-LA) and Majority Leader Schumer (D-NY) agreed on a topline number for fiscal year 2024 over the weekend, conservative House members have already voiced their disdain for the compromise, further complicating an already difficult to maneuver political landscape. Shutdown politics are not new, but the ongoing fiscal brinkmanship will be Speaker Johnson’s first test to see if he can placate an emboldened House Freedom Caucus. Senate negotiators also continue to work on a supplemental package to fund Ukraine and Israel, two U.S. allies that are entangled in war, and shore up the U.S.-Mexico border, which has experienced an unprecedented influx of illegal migrant crossings.

Aside from headline items, Congress will resume its regular cadence of legislative activity and hearings. In the House, Housing and Urban Development (HUD) Secretary Fudge will testify in front of the Financial Services Committee for the first time since 2021. Meanwhile, the Senate Banking Committee will hold a hearing this week focused on fentanyl trafficking. All the while, the 2024 Presidential election season officially kicks off this month, with the Iowa Caucuses taking place January 15th and the New Hampshire Primary taking place on January 23rd. In terms of regulation, several federal agencies face a deadline to implement artificial intelligence (AI) this month pursuant to President Biden’s AI Executive Order from October and the Basel III endgame proposal comment period closes on January 16th. Below, RFA provides our take on notable legislative, regulatory, and administrative activity for the upcoming January work period.

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Congressional Activity

Congressional activity is back in full swing after the winter recess, and Congress must (once again) race to avert a looming government shutdown. Aside from robust House Financial Services, Senate Banking, House Ways and Means, and Senate Finance Committee agendas (described in detail below), next month will feature a number of Congressional hearings on different policy topics.

Senate Activity

The Senate will start off the week by resuming consideration of the nomination of Mr. Krazen to be a U.S. District Judge for the Southern District of Texas. The Senate will also consider Jose Rodriguez to be assistant Secretary of Labor later in the week. Further, the Senate may vote on Sen. Tillis’ (R-NC) CRA resolution to overturn the SEC’s cyber disclosure rule this month.

Upcoming Hearings:

- **The Budget Committee** plans to hold a hearing focusing on safeguarding Muni bonds from climate-related risk.
- **The Energy and Natural Resources Committee** plans to hold a hearing on government incentives to foster a reliable electric vehicle supply chain.

House Activity

In the House, lawmakers will consider several financial services related bills under suspension pertaining to China and Russia, including the China Exchange Rate Transparency Act of 2023, the Taiwan Non-Discrimination Act of 2023, and the No Russian Agriculture Act, among others. Many of these bills passed with bipartisan support during the House Financial Services Committee markup, so we expect many of them to have bipartisan support when they come to the full floor for a vote.

Upcoming Hearings:

- **The Homeland Security Committee** will have a hearing tomorrow focused on how DHS Secretary Mayorkas is handling the crisis at the southern border. Republicans still plan to move to impeach the Secretary as early as this month given the recent surge in migrant crossings. If the impeachment is successful, Mayorkas will be the first Cabinet Secretary impeached in over 100 years.
- **The House Energy and Commerce Subcommittee on Environment, Manufacturing, and Critical Minerals** will hold a hearing on protecting American clean energy production and the EPA's regulatory overreach. The hearing will have two panels, one featuring a deputy assistant administrator from the EPA and another featuring different energy companies. Republicans are likely to criticize EPA regulations for the oil and natural gas sector, as well as recently announced EPA regulatory actions such as changes to the Greenhouse Gas Reporting Program and amendments to two air toxics standards that apply to oil and natural gas.
- **The Homeland Security Committee** will hold a hearing on Uyghur forced labor.
- **The Energy and Commerce Committee** will hold a hearing on cybersecurity in the communications field.
- **The Small Business Committee** will hold a hearing focused on access to capital for small businesses.

Appropriations

Lawmakers will scramble this month to avert the looming government shutdown, with two deadlines rapidly approaching on January 19th and February 2nd, respectively. On January 19th, funding will run out for the departments of Agriculture, Transportation, HUD, Energy, and Veterans Affairs. On February 2nd, funding for everything else, including defense, will run out. Speaker Johnson (R-LA) and Majority Leader Schumer (D-NY) struck a deal over the weekend on overall budget totals, but the agreement has already been criticized by the House Freedom Caucus and several hardline conservatives.

To avoid a partial government shutdown on January 19th, the House will almost certainly have to put any spending bills up under suspension to avoid procedural rules that could stall the process. If this is the case, the threshold for passage raises to a two-thirds majority instead of a simple majority. As of now, the GOP is operating with a two-seat majority for the month of January given current vacancies and illnesses, meaning any funding legislation that moves on suspension will need overwhelming Democratic support to pass. Given the number of conservative hardliners who have already come out against the topline number, it is unclear at this time if the legislation has the votes to pass.

Additionally, it is unclear if there will be retribution from the conservative flank of the Republican Party if Speaker Johnson brings unfavorable bills to the floor for a vote. Conservative lawmakers could still utilize the motion to vacate the Chair, like how they ousted Speaker McCarthy last year; although, it is hard to imagine conservatives wanting to rehash another Speaker race in an election year.

While the agreement over the weekend reduces the chance of a government shutdown, there are still several moving pieces that need to be addressed. For example, it is unclear how the House will vote on the appropriations bills. Speaker Johnson had previously vowed to vote on all 12 individual bills, which could still be feasible, but other options include packaging some of the bills in minibuses, which may be unacceptable for some hard-right House members. At this juncture, our base case is that the Congress will likely need to enact a short-CR for the four bills that expire on January 19th. For this to happen, Speaker Johnson will need to abandon his stated opposition to a short-term CR. If Johnson does not consent to a short-term CR, then RFA believes that it is more probable than not that there will be a partial shutdown for the agencies whose funding expires on January 19th.

Bipartisan Tax Package

Conversations between Chair Smith (R-MO) and Chair Wyden (D-OR) have continued since the end of the year on a potential bipartisan tax package that could renew some expired business tax provisions and the expired Child Tax Credit. Circling an estimated cost of \$100 billion, the tax writers are close to finalizing a proposal that they hope to have ready to ride on a potential government funding bill.

Discussions of potential pay-fors and other policies are still under consideration. House and Senate leadership haven't spoken publicly about the probability of including the bill in the larger appropriations bill, but the tax committee leadership is operating with a buy-in if a vehicle emerges.

Border Funding & Aid for Israel and Ukraine

Senate negotiators, including Sens. Sinema (I-AZ), Murphy (D-CT), and Lankford (R-OK), are hopeful that a bipartisan border security deal, coupled with emergency aid for Ukraine and Israel, is within reach. Current sticking points in the negotiations include parole authority, tightening standards for asylum seekers, and expanding expedited removals in the interior. Even if the Senate can come up with a package that has enough support to pass the chamber, its fate in the House is uncertain.

Speaker Johnson's recent CODEL to the Southern border with 60 House Republicans did little to instill confidence in a package coming to fruition. During his press conference, he underscored that the Senate package would have to look like the House-passed H.R. 2, which received zero Democratic support, to stand any chance of passing the chamber. Johnson also suggested that he could use the

looming government shutdown as leverage to secure more concessions on border policy. It is conceivable that a border security and appropriations bills could move in tandem, but as of now, it is unclear if that will be the case.

There is no set deadline for the supplemental package to move, so if factions are unable to find middle ground, it is possible that a package of any kind could slip into February or later, or potentially not happen at all.

Nominations

Department of Labor

Julie Su's nomination for Secretary of the Department of Labor (DOL) was returned to the White House without a vote for confirmation on December 20th last year, setting a record for most days (127) without a confirmation vote for any nominee in history. Su remained Acting Labor Secretary for the 10 months since her initial appointment. In the last week, President Biden has expressed interest in formally reappointing Su while she remains in an acting capacity at the agency. Additionally, the Senate will also vote on the nomination of Jose Javier Rodriguez to be an Assistant Secretary of Labor in the coming days.

CFTC

The Senate was not able to finalize its year-end nominations package due to disagreements with certain Senators. Right before the holiday recess, Sen. Menendez (D-NJ) blocked the confirmation of CFTC Commissioner Summer Mersinger to serve another term at the agency, stating that he was protesting a "lack of responsiveness" from the Biden Administration on border security discussions. This will likely leave her confirmation in limbo for the next few months.

FTC

Similarly, Sen. Hawley (R-MO) withheld consent for the Senate to fast track the confirmation of Andrew Ferguson to serve as a commissioner at the Federal Trade Commission because of concerns on his stance on BigTech issues and his close ties to Senate Minority Leader McConnell (R-KY). The Senate plans to hold another vote on Ferguson's nomination, as well as the nomination of fellow FTC commissioner nominee Melissa Holyoak, this month. Furthermore, the Senate will also consider the renomination of FTC Commissioner Rebecca Kelly Slaughter to serve in a new term in the coming weeks.

Department of Treasury

The Senate Finance Committee will consider the nomination of Corey Anne Tellez to be Assistant Secretary for Legislative Affairs at the Treasury Department, a role in which she currently serves in an acting capacity.

Other Notable Priorities

CCCA

Senate Judiciary Chair Durbin (D-IL) may hold a hearing this month on the Credit Card Competition Act, but the details of the hearing, including the scope and type of witnesses, have not been

confirmed. The hearing is tentatively scheduled for next week. This will be the Judiciary Committee's second hearing on credit card swipe fees.

Sens. Durbin and Marshall (R-KS), as well as the big retail trade groups like the National Retail Federation, the National Association of Convenience Stores, and the Retail Industry Leaders Association, continue to aggressively push for the CCCA, and we expect these advocacy efforts to continue this year.

Artificial Intelligence

While Leader Schumer's AI insight forums have concluded, the Senate still plans to hold multiple hearings this month focused on artificial intelligence. The Judiciary Subcommittee on Privacy, Technology, and the Law will have a hearing on AI in journalism, while the Homeland Security and Governmental Affairs Committee will have a second hearing focused on using AI to improve government services.

Committee Activity

Senate Banking Committee

The Senate Banking Committee will hold a hearing to discuss fentanyl trafficking on Thursday, the only hearing of the year scheduled thus far. While HUD Sec. Fudge will testify in the House Financial Services Committee this week, it is uncertain if Chairman Brown (D-OH) will call on her to do the same before Senate Banking early this year.

Looking Ahead

As the new year progresses, the Committee will gear up for its banner hearings, including Federal Reserve Chair Jerome Powell's Humphrey-Hawkins hearing and an appearance from Treasury Secretary Janet Yellen, both of which will take place sometime between February and early March.

With lawmakers focused on the looming government funding deadlines, the full Committee is unlikely to hold many other hearings or markups before a final deal is made to avoid a government shutdown. Nevertheless, the Housing, Transportation, and Community Development Subcommittee may hold an AI-focused hearing near the end of the month.

Furthermore, it is possible that the Committee continues its discussions around AML and digital assets and DeFi, given the bills introduced last year by Sens. Warren (D-MA) and Reed (D-RI), although no concrete details have emerged about a potential hearing yet.

House Financial Services Committee

The House Financial Services Committee agenda for the month is coming together, with three hearings scheduled for this week and additional hearings to be announced as we progress through the month. HFSC Republicans will hold their annual member retreat next week, where we expect they will discuss the Committee agenda and top priorities for the coming year.

Though not officially scheduled yet, we expect the Committee could hold additional hearings this month on the SEC's climate rule potentially at the subcommittee and full committee levels, as well as additional hearings on China competitiveness and bank regulatory issues.

Like the Senate Banking Committee, we expect that Secretary Yellen will appear before the HFSC in her FSOC capacity in the beginning of February, and Chair Powell will appear for his Humphrey-Hawkins hearing at the end of February.

The following hearings will be held this week:

- On Wednesday, January 10th, **the Subcommittee on Capital Markets** will hold a hearing entitled, “Examining the DOL Fiduciary Rule: Implications for Retirement Savings and Access,” which will focus on the Department of Labor’s proposed rulemaking package that would amend the regulatory definition of the term fiduciary and includes proposed amendments to class prohibited transaction exemptions (PTEs) available to investment advice fiduciaries.

**The DOL’s Retirement Security rules package, proposed on November 1, 2023, has come under heavy criticism from Republican members, who have flagged concerns about how the rules threaten to limit access to investment advice for low-and moderate-income individuals. In a letter following the issuance of the proposal, Chair Wagner (R-MO) sent a letter to DOL Deputy Secretary Julie Su, flagging a number of concerns and questions about the proposed rule, including whether it complies with the 5th Circuit decision that vacated the DOL’s prior attempt to extend its jurisdiction; how the fees included in the proposal meet the Biden Administration’s definition of “junk fees;” and what evidence the DOL has to demonstrate that the existing federal and state regulatory enforcement framework “is not working.”

- Also scheduled for January 10th, **the Subcommittee on Digital Assets, Financial Technology, and Inclusion** will hold a hearing entitled, “Regulatory Whiplash: Examining the Impact of FSOC’s Ever-Changing Designation Framework on Innovation.” The hearing will focus on the most recent report from the Financial Stability Oversight Council (FSOC), which indicated its concern that vulnerabilities may arise from crypto-asset price volatility, the use of leverage, and the level of interconnectedness within the industry, including the risk of runs on cryptocurrency platforms and stablecoins. The hearing is a precursor to Treasury Secretary Yellen’s expected appearance before the committee in her FSOC capacity, which is scheduled for early February.
- On January 11th, Housing and Urban Development (HUD) Secretary Marcia Fudge will testify before the **full Financial Services Committee** in a hearing entitled, “Oversight of the Department of Housing and Urban Development and the Federal Housing Administration.” This will be the first time Sec. Fudge testifies before the Committee since 2021.

Senate Finance Committee

Chair Wyden has indicated that he plans to continue investigations into several businesses and high-net worth individuals, including private placement life insurance, with a report and companion legislation. We also expect further investigations into private equity and the tax strategies of pharmaceutical companies.

House Ways & Means Committee

Chair Smith's Committee has been deeply involved in the effort of the House GOP to investigate the criminal actions of Hunter Biden, leading to the impeachment inquiry. We expect the Committee to continue to lead that effort along with the House Judiciary and House Oversight Committees.

Policy wise, we expect some committee business related to Temporary Assistance for Needy Families (TANF), hearings in the healthcare space, and the beginning of listening sessions with taxpayers ahead of the 2025 "tax cliff." We expect these conversations to be a steady product of the committee throughout the rest of the year.

Biden Administration Update

President Biden's dual role as the leader of the country and a candidate for reelection will soon enter a more public phase as the 2024 election year kicks off. Despite low polling numbers on his handling of the economy, the President's reelection campaign is expected to focus heavily on the economy. This comes amidst various challenges, such as wars in Europe and the Middle East, simmering tensions with China, and, notably, Taiwan's upcoming presidential and parliamentary contests on January 13th, adding an additional layer of complexity. In terms of domestic policy, the Biden Administration has no time to waste.

State of the Union

The State of the Union address will be delivered by President Biden on March 7th, following Speaker Johnson's invitation. This is a relatively late date in the calendar compared to previous addresses. In his address, Biden is expected to discuss the achievements and priorities of his administration. He has addressed economic recovery following the pandemic and the Ukraine war in previous years.

2024 Priorities

Congressional Review Act Deadline

The administration will need to act quickly to protect its regulatory policies from overturning if Republicans take control of the House, Senate, and White House by enforcing the Congressional Review Act, which allows lawmakers to pass legislation disapproving of a rule within 60 legislative days. Ideally, major regulations need to be completed before June or July (the deadline, which depends on how many days Congress is in session, can only be estimated right now).

China Tariff Review

The Biden administration is projected to complete its review of tariffs imposed on China during the previous administration early in the year. While most tariffs are likely to remain in place, there may be some adjustments. For instance, there is consideration of raising tariffs on high-tech goods like electric vehicles while decreasing tariffs on more straightforward consumer goods and intermediate products utilized by U.S. manufacturers. The exact timing of the review is still uncertain. Throughout the year, there will likely be pressure from both parties to vote on repealing China's permanent normal trade status, potentially creating a challenging situation for the Biden administration during election season.

Artificial Intelligence Regulation

According to an executive order by President Biden in October, several federal agencies are required to make significant progress in artificial intelligence by the end of January. The Commerce Department is expected to propose new regulations requiring cloud computing providers to report if foreign entities utilize their services for AI models capable of cyberattacks. The Department of Homeland Security will also introduce new rules to modernize the H-1B specialty occupation worker program.

Climate & Energy Regulation

The first quarter of the year is crucial for the Biden administration's implementation of key components of its climate agenda. We anticipate the announcement of regulations aimed at reducing harmful coolants and methane leaks from fossil fuel operations, the introduction of significant climate rules for power plants, cars, and heavy-duty trucks, guidelines for methane reporting, and the establishment of a fee on excess emissions. The administration will also address environmental justice and equity concerns through mitigation and adaptation activities.

CHIPS & Science Act Projects

President Biden aims to showcase projects funded through several spending bills he shepherded across the finish line. The Commerce Department, currently having allocated only \$35 million for one microchip project, is under immense pressure to grant more funds for CHIPS and Science Act projects in 2024.

Regulatory Update

Prudential Regulators

On December 27, 2023, the Federal Deposit Insurance Corporation (“FDIC”), the Board of Governors of the Federal Reserve System (“FRB”), and the Office of the Comptroller of the Currency (“OCC”), under the Federal Financial Institutions Examination Council (FFIEC), published [proposed regulatory reporting changes](#) in the Federal Register for public comment to the Call Report forms and the FFIEC 002 Report related to reporting on:

- (1) loans to nondepository financial institutions and other loans
- (2) guaranteed structured financial products, and
- (3) proposed long-term debt requirements.

These proposed changes would be effective as of the June 30, 2024, report date, except for those related to the proposed long-term debt requirements that would take effect the same quarter as the effective date of any final rule. The FFIEC 002 report pertains to the report of assets and liabilities of US branches of foreign banks, while general call report forms refer to the quarterly reports that commercial banks and other financial institution must file, which include information such as details on assets, liabilities, income, expenses, and a balance sheet among other. These changes would alter the forms used by financial institutions. Comments are due by February 26, 2024.

Finally, the Basel III endgame comment period closes on January 16th.

FDIC on Asset Managers

On January 5, 2024, FDIC Director Jonathan McKernan spoke to the Annual Meeting of American Law Schools and, as [part of his speech](#), suggested that the FDIC should scrutinize the growing influence of the largest asset managers on publicly-traded banks. In our view, the FDIC is unlikely to pursue an investigation under the current FDIC leadership. However, McKernan's comments foreshadow a potential priority should a Republican win the White House and appoint a new FDIC Chairman.

Securities and Exchange Commission

Treasury Market Clearing Rule

The SEC finalized a major rule in December: the Treasury market clearing rule, which will require certain cash Treasury transactions and repurchase agreement transactions to be centrally cleared. This was a priority not only for Chair Gensler, but also for the prudential regulators. The SEC has a number of additional rules that are nearing completion and could see action in the next couple of months.

Dealer Definition Rule

Another rule that would affect the Treasury market that is nearing completion is the so-called “dealer definition” rule, which would require certain funds that trade Treasuries to register with the SEC as government securities dealers. This rule is still the subject of interagency discussions with both the Fed and Treasury, which has delayed finalization.

Bitcoin ETF

The SEC is likely to approve a number of Bitcoin ETF applications this month — they are required by court order to act on Grayscale's Bitcoin ETF by tomorrow. The SEC is likely to act on a number of Bitcoin ETF applications simultaneously, rather than finalize only the Grayscale application. While ETF applications are typically approved by the staff under delegated authority, we expect the Bitcoin ETF applications to receive approval from the Commissioners, given their novelty and high-profile nature.

Consumer Financial Protection Bureau

Much like Congress, the CFPB seems to be stacking deadlines for a busy sprint before the Congressional Review Act window potentially closes this summer. The comment periods for the Consumer Financial Data Rights (1033) proposal and the proposal to define companies that are larger participants in digital payment markets came and went without extensions sought by the industry.

Now, the Bureau will work towards finalizing those rules all while it attempts to move forward with an ambitious agenda including proposals related to fees charged for overdraft and insufficient funds as well as a controversial proposal lowering the safe harbor cap on credit card late fees. Timing on all of these proposals has been in flux for months, but the credit card rule could be finalized as soon as next week.

Simultaneously, the Bureau signaled in early December it intends to issue new guidance on earned wage access products. It also updated its rulemaking agenda to reflect that it expects to finalize the

registries for contract terms and conditions and nonbank entities subject to agency and court orders this March.

RFA's 2024 Election Forecasting

Iowa Caucuses

The 2024 presidential Republican primary process will begin with the Iowa caucuses next week on January 15th, with former President Donald Trump holding a significant lead over the rest of the GOP field in polling conducted by Real Clear Politics (RCP). The former President's Iowa polling numbers have remained consistent at around 51%, with Florida Governor Ron DeSantis in a distant second place with less than 19% and former U.S. Ambassador to the U.N. Nikki Haley following close behind at 16%.

The final Republican debate before the Iowa caucuses is set for January 10th at 9:00 PM (ET). The debate stage will only include Haley and DeSantis, as Vivek Ramaswamy and former New Jersey Governor Chris Christie failed to meet CNN's qualification thresholds to participate and former President Donald Trump elected not to attend. Instead, Trump has opted to participate in a FOX News town hall event in Des Moines, Iowa, which will begin at the same time as the GOP debate on January 10th.

It remains highly unlikely that Haley or DeSantis will manage to make up enough ground on former President Trump in Iowa before January 15th, as the former President's support in the state has been strong since the start of his 2024 campaign.

RFA's Projection: Solid Trump

New Hampshire Primary

The New Hampshire Primary takes place on January 23rd, and while Haley has made significant headway against her former boss, Trump, the RCP average still has her trailing by 21.5% points. That said, an American Research Group poll of likely Republican voters from December 14-20th has Haley at a striking distance from Trump, with 29% of the vote compared to Trump's 33%.

Haley's momentum can be attributed to her strong debate performances and winning the endorsement of the popular New Hampshire Governor, Chris Sununu. While Haley's poll numbers have improved significantly, she has yet to overtake Trump in any poll. Beating the former President in New Hampshire is feasible given the electorate's more moderate makeup, but it is difficult to envision a scenario where Haley eeks out a victory with former New Jersey Governor Christie still in the race. Christie, a staunch Trump critic, is polling well in the granite state with an RCP average of 10.5%.

Even if Christie were to drop out of the Presidential race, Haley still faces an uphill battle. Her campaign has not been free of mistakes. Her latest gaffe about the Civil War could cost her momentum and siphon off votes to Chris Christie, who has underscored that he has no intention of dropping out of the presidential race before the primary.

While momentum is shifting in Haley's direction, an upset victory would require everything to align perfectly for her candidacy—a less-than-likely outcome.

RFA's Projection: Likely Trump