A look ahead to Congressional Activities before Capitol Hill Day

Congress returns today from its two-week spring recess for a four-week work period leading into summer and the Memorial Day holiday. With only eleven work weeks before the House breaks for the August recess and less than two months until the first Democratic presidential debates for 2020, there's a lot that has to be packed into May. While the appropriations process continues with the hopes of bills moving at least to the House Floor in the next few months, this month also will see continued repercussions from the Mueller Report with testimony later this week from Attorney General William Barr, a potential appearance by Mueller himself at some point in May and a fight over whether former White House Counsel Don McGahn and other White House aides will testify. Congressional committees have robust schedules planned (expected Senate Banking and House Financial Services Committees plans are below), and the regulators are also starting to look at 2020 and the need to have rules and regulations finalized by this time next year to thwart any potential Congressional Review Act challenges if there's a new occupant in the White House in 2021. We highlight these and other issues below as we briefly preview what we believe will be the focus in Washington, subject as always to external or unexpected events that could disrupt the schedule.

Expected Senate Banking Committee (SBC) Activity

SBC Chairman Crapo (R-ID) kicks off his spring hearing agenda this week with a focus on the regulatory process and use of guidance by financial regulators. Crapo, and Sens. Tillis (R-NC) and Toomey (R-PA) have been very active and critical in examining how financial regulators use guidance and have previously challenged certain guidance documents. For example, Sen. Tillis has challenged the Federal Reserve’s process for identifying and then examining banking organizations in the Large Institution Supervision Coordinating Committee program. Last Congress, Sen. Toomey challenged the prudential regulators’ leveraged lending guidance for failing to meet Congressional Review Act (CRA) requirements. We expect members to closely examine concerns with how agencies follow the Administrative Procedures Act as well as raise concerns with some guidance documents having the effect of a rule. As will be discussed in more detail below, this hearing also syncs up with recent Trump Administration action on regulations and processes at federal agencies.

On May 15th, SBC will kick-off a two day hearing schedule for the prudential regulators and the House Financial Services Committee (HFSC) explore recent actions by the agencies. In the Senate, we expect Chairman Crapo and Republicans to continue to push for full implementation of the provisions of the regulatory reform bill from last Congress (S. 2155) and to encourage the regulators to move faster on completing a rewrite of the Volcker Rule, reforming the Community Reinvestment Act, and following up on issues raised at the Committee's hearing on the regulatory process. Democrats, on the other hand, are expected to sharply criticize the Office of the Comptroller of the Currency’s (OCC) efforts to reform the Community Reinvestment Act, and Ranking Member Brown (D-OH) will likely criticize the Federal Reserve’s foreign bank tailoring efforts, among other items. And finally, May also will be the official kick-off of the committee’s bipartisan efforts to examine privacy issues in the financial services sector – we look at this issue in a little more detail below.

Expected House Financial Services Committee (HFSC) Activity

As she has done during her brief tenure heading HFSC, Chairwoman Waters (D-CA) has set forth the expected schedule for her committee over this next work period:
This week will see a full committee hearing focused on the country’s housing infrastructure needs and subcommittee hearings looking into payday lending (Consumer Protection and Financial Institutions Subcommittee), auto lending and the use of credit scores in auto insurance determinations (Oversight and Investigations Subcommittee), and how diversity and inclusion have a positive impact on the bottom line of businesses (Diversity and Inclusion Subcommittee).

Next week will see a hearing focused on concerns about redlining in housing (Housing, Community Development and Insurance Subcommittee) as well as the full committee’s second mark-up where we expect consideration of legislation regarding BSA/AML compliance (more details are below), beneficial ownership and legislation to address concerns by Democrats of the direction that the Consumer Financial Protection Bureau (CFPB) has gone under the Trump Administration (the Consumers Choice Act), among others.

Later in May, the Investor Protection, Entrepreneurship and Capital Markets Subcommittee will look at proposals to strengthen workers’ rights, and the National Security Subcommittee will hold a hearing on sanctions. That same week, the prudential regulators will follow up their appearance in front of SBC with an appearance before the full HFSC.

As of now, the only scheduled hearing for the last week of the work period is the first testimony of Housing and Urban Development (HUD) Secretary Ben Carson in front of the Waters-led HFSC, where he is sure to be questioned extensively on issues such as housing discrimination and the Administration’s approach to fair housing.

Aside from these hearings and the mark-up, we also expect to see the task forces focused on FinTech officially formed with Rep. Lynch (D-MA) heading up one focused on FinTech generally, and Rep. Foster (D-IL) leading one focused on AI. Rep. Hill (R-AR) is expected to head these efforts for Republicans.

**Expected House Floor Activity**

Along with taking up retirement savings reform (the SECURE Act, which is discussed below), the House is expected to focus on some key Democratic priorities over this work period, including legislation to affirm support for the Paris climate accord and direct President Trump to develop a climate change plan (Climate Action Now Act), the Equality Act to prohibit discrimination on the basis of sex, gender, and sexual orientation, and potentially legislation to address DACA – the American Dream and Promise Act – which would block the Trump Administration’s efforts to end the program and provide a pathway to citizenship for DACA recipients (among others). On the financial services front, after HFSC acts, the full House may consider the Consumers First Act CFPB reform legislation. It probably goes without saying, but aside from the SECURE Act, the Senate is highly unlikely to consider any of these measures, making them mainly messaging bills for Democrats. Additionally this month, the House also may consider legislation related to health care and prescription drug costs, disaster relief funding and an extension of the National Flood Insurance Program, which expires on May 31st.

**Retirement Savings**

Prospects are bright for a bipartisan package of reforms to ERISA provisions governing 401(k) plans. Last month, the House Ways and Means Committee passed H.R. 1994, the SECURE Act, introduced by Chairman Neal (D-MA), Ranking Member Brady (R-TX), and Reps. Kind (D-WI) and Kelly (R-PA). As highlighted above, House Majority Leader Hoyer (D-MD) has announced plans to bring the bill to the House floor in May. While not identical, this legislation largely lines up with the Retirement Enhancement and Savings Act (RESA) introduced by Senate Finance Committee Chairman Grassley (R-IA) and Ranking Member Wyden (D-OR). These provisions have passed the House and Senate previously but finally seem on track to pass on a stand-alone basis later this year and be enacted into law.
The bills are intended to encourage more employers to offer work-based 401(k) plans, and more employees to participate in them, by reducing costs and regulatory burdens. A key provision in both bills would amend “multiple employer plans,” or “MEPs,” to allow employers to join together to sponsor a single retirement plan for their workers. Another common provision would create a new fiduciary safe harbor to encourage employers to include lifetime-income products within plans. The House bill would increase the mandatory distribution age from 70½ to 72.

Looking even further ahead, the leadership of the Ways and Means and Finance Committees would like to take up additional retirement provisions once this legislation has been completed. Chairman Neal has in the past supported “Auto IRA” legislation, under which employers not offering 401(k) plans would be required to enroll employees automatically into IRA accounts. Senators Wyden, Warner (D-VA) and other Members are also interested in promoting savings for gig employees and self-employed individuals, such as through universal accounts that would not be tied to employment.

**BSA/AML**

As mentioned briefly above, Bank Secrecy Act/Anti-Money Laundering legislation will once again be a focus for HFSC during the upcoming work period. We understand that Rep. Maloney’s (D-NY) beneficial ownership bill, the Corporate Transparency Act, will likely be included in the markup on May 8th, and it is possible that BSA/AML legislation from Chairwoman Waters will also be included. Negotiations are ongoing between the majority and minority, and likely will be up until the markup, but we understand both sides are trying to come to an agreement on the bills.

**Privacy**

Privacy continues to remain an important topic of discussion around Washington heading into the spring. Late last week, Facebook announced it expects to pay between $3-5 billion – the largest ever FTC penalty for privacy violations – to settle ongoing investigations over how it handled consumer data. Companies are still struggling to figure out whether a federal privacy standard will make it into law, especially with the 2020 Presidential campaign hitting full swing. In the Senate, the Commerce Committee continues to try and find compromise on a federal floor, and SBC is reviewing submissions it received from stakeholders on what aspects of consumer privacy should be addressed by their committee. Senate Commerce will holding a hearing May 1st on consumer perspectives of a federal privacy framework, and SBC will hold a hearing May 7th focused on Europe’s General Data Protection Regulation hoping to find out what does and doesn’t work from the world’s most notable standard. At this hearing, we expect SBC to clearly define their jurisdiction and signal the scope of their upcoming work.