

September 22, 2022

Today's Driving Events

- **Bank Merger Battle Likely Delayed by FDIC Nominations:** The White House nominations of two Republicans to fill open seats on the Federal Deposit Insurance Corporation (FDIC) board, coupled with the promise of a third nominee to be chair, will at the very least push out for several months the battle between the FDIC and the Federal Reserve over bank merger rules, or if a more moderate nominee is confirmed as chair, could completely remove the tail risk of unilateral action from the FDIC to deny deposit insurance to newly merged banks.
- **Golden State of Mind:** While comprehensive federal data privacy legislation is stalled in Congress, California is moving forward with toughening privacy rules through the California Privacy Protection Agency, which will hold a public meeting tomorrow.
- **Is McCarthy an -ism or a dud?:** House Minority Leader Kevin McCarthy (R-CA) is releasing a messaging and policy agenda this week. Is it a beginning moment for policy leadership or the high watermark on a leadership bid sure to go awry?

FDIC Board Nominees and Bank Merger Policy: In what many financial regulatory observers found to be a surprise move, the White House this week nominated two long-time Republican staffers to fill two of the three open seats on the Federal Deposit Insurance Corporation (FDIC) board of directors. Travis Hill, who was selected to be vice chair, was previously a senior advisor to the prior FDIC chair, Jelena McWilliams, and before that was senior counsel on the Senate Banking Committee. The other nominee is Jonathan McKernan, who is currently a senior counsel at the Federal Housing Finance Agency (FHFA) on detail to the Banking Committee's Republican staff. He was also a Treasury Department appointee under the Trump administration and before that was policy advisor for former Senator Bob Corker (R-TN). The White House did not announce a nominee for chair, although that is expected in the near future. **In terms of process, all three nominees must be considered at the same time because if Hill is confirmed to his post, the rules of the FDIC mean that he will become chair because current Acting Chair Martin Gruenberg is currently not confirmed for the chair or vice chair position and in fact, his term expired years ago, but he has been allowed to continue until new nominees are confirmed (the board has not been totally filled since 2015).** This process issue also means that the White House must nominate someone who will have universal support amongst Democrats, or be able to pick up some Republican support, and that this nomination, confirmation hearing, and Senate floor vote must occur before year end. **Theoretically, the White House could renominate all three individuals if the Senate runs out of time to confirm them before the end of this Congress, but if Republicans take control of the Senate as a result of the midterm elections, then there is every possibility that they vote Hill and McKernan onto the board but not the Democratic chair nominee and then Hill would become the acting chair and potentially leading to a deadlocked 2-2 board,** with Comptroller Michael Hsu and Consumer Financial

Protection Bureau (CFPB) Director Rohit Chopra the other two Democratic board members. That is not a risk worth taking for the White House, so we expect whomever is nominated to be rushed through the confirmation process during the lame duck session in December. Senate Banking Committee Chairman Sherrod Brown (D-OH) was also surprised and offput by the nominations saying in an interview that, “I want to see the whole slate, and that includes the Democrat. We’ve got plenty of stuff we’re doing now until the end of the year.” Though he followed up saying, “I don’t want to leave them hanging forever.” In terms of potential candidates to be chair, we do not expect a renomination of acting chair Gruenberg, who Brown spoke to during a previously scheduled call and “encouraged him to work with the White House on this.” Instead, we expect someone in the mold of Charles Yi, currently a policy and legal advisor at the FHFA, who was previously the FDIC general counsel, as well as past staff director of the Banking Committee. Often, current and former congressional staffers are looked upon more kindly by senators, which can help grease the skids for their confirmation. With a new chair possible by year end, the urgency of FDIC board members Chopra and Hsu to push Gruenberg to move forward with an updated bank merger guidance decreases and the **status quo is likely to reign for at least several more months**. This interim time could also be viewed by bank executives as a green light to announce any potential mergers and to get the process moving while under the current regime. Our base case had been that the FDIC would develop its proposal sometime this fall or winter and that it would try to negotiate with the Federal Reserve Board, led on this issue by Vice Chair for Supervision Michael Barr. If such talks go nowhere though after several months, the FDIC could potentially elect to make its own rules regarding offers of deposit insurance to a newly-merged entity, even if the Fed had blessed the transaction. Although this could still occur, it is now almost certainly pushed out by several months and **if the new chair is more moderate than Chopra and Gruenberg, then the risk of such unilateral action could be removed entirely, but that will not be known until we get the nominee and he or she has their confirmation hearing and sets their initial agenda.**

Update on CA Privacy Rules Expected: The American Data Privacy and Protection Act has encountered several obstacles in its path to passing Congress, including opposition from Californian officials, a lack of key support in the Senate, and a tight timeline in an election year. For these reasons, it’s looking unlikely that this comprehensive legislation will make it into law this year. In California, on the other hand, tougher data privacy rules are closer on the horizon. **The Golden State’s top privacy regulator, the California Privacy Protection Agency (CPPA), is continuing apace with rulemaking implementing the state’s privacy laws. The agency will hold a public board meeting tomorrow afternoon, and its ongoing rulemaking process is on the [agenda](#).** CPPA Board Members Lydia de la Torre and J. Christopher Thompson are set to discuss “the course of action for [the] current rulemaking process.” According to a [slide deck](#) released by the CPPA in advance of tomorrow’s meeting, the agency’s staff are currently going over input received from the public during the comment period this summer. After the next version of the initial rules formally proposed in July are released, there will be another comment period. **The CPPA has not given an indication of when the rulemaking process will be complete.** The CPPA faced a statutory deadline to finish rulemaking by July 1st, six months before the California Privacy Rights Act (CPRA) takes effect on January 1st, 2023. This deadline, however, was not met. In February, the CPPA executive director, Ashkan Soltani, [said](#) at a board meeting that the agency planned to finish rulemaking in the third or fourth quarter of this calendar year. Under Soltani’s timeline, the formal rulemaking was slated to start in the second quarter and continue in the third quarter. The [notice of proposed rulemaking](#) was not ultimately released until July though, suggesting that completion of the rules might slip later than estimated. **Tomorrow’s meeting could offer greater clarity on the CPPA’s timeline for completing this rulemaking. The next few months will likely be key for the agency as regulators seek to finalize rules in**

anticipation of the CPRA's implementation date. The CPPA is only one venue for consideration of stronger data privacy protections. The California legislature recently passed a notable bill on children's online safety and privacy. In addition to the comprehensive ADPPA bill, Congress is also considering legislation to boost federal protections for children's personal information online. The Federal Trade Commission has also initiated a rulemaking on "commercial surveillance," and the Consumer Financial Protection Bureau has indicated an interest in protections for financial data. **We will publish a Spotlight Report later today with a more in-depth analysis of how the legislative and regulatory outlook for data privacy is heating up on both the federal and state levels.**

A Republican Agenda Worth Watching: There's a new McCarthyism coming to Washington. That's because there's a new McCarthy. Not Senator Joe McCarthy (R-WI). Not Rep. Kevin McCarthy (R-CA) from 2015. Rather, it's House Minority Leader Kevin McCarthy of 2022. The top House Republican is set to unveil tomorrow the "Commitment to America," a GOP messaging guide and policy blueprint for 2022 and beyond. A [one pager](#) of the plan was leaked with House Speaker Nancy Pelosi (D-CA) already [making hay](#) of the "extreme MAGA" agenda. The Commitment to America is inspired by former House Speaker Newt Gingrich's (R-GA) "Contract with America" that paved the way for the Republican revolution of 1994. **McCarthy's is lighter on details — it focuses on the economy, national security, freedoms, and government accountability. Of course, McCarthy is seen as a lightweight. No congressional leader in recent memory has faced such scorn and derision by the DC establishment as McCarthy.** "[Dumb](#)," "[pathetic](#)," and "[bland](#)" are oft-used adjectives to describe him. He's the dog who is on track to catch the speakership car and won't know what to do with it. As retiring Rep. Adam Kinzinger (R-CA) [told the Wall Street Journal](#), "He'll be the worst speaker and he won't last because he's going to be led around by insurrectionists." We don't doubt McCarthy's dearth of policy chops or ideology. He is like a rooster weathervane, going where the Republican winds blow since his failed attempt at speaker in 2015. **In that sense, McCarthyism resembles a MAGA version of Bidenism.** As goes the Democratic Party, so goes Joe Biden. The president is lauded for his soft skills, not his intellectual chops. Once a moderate representing the corporate state of Delaware, Biden moved left to stay in step with the party's leftward shift. **This is where we believe McCarthyism may overperform the conventional wisdom of an unremarkable and failed speakership. McCarthy is attempting to unite his rank-and-file and empower policy heavyweights. That's something that failed many Republican speakers of yore.** It's something that is failing the more esteemed Senate Minority Leader Mitch McConnell (R-KY) right now. Rep. Marjorie Taylor Greene (R-GA), perhaps one of the most anti-establishment, pro-MAGA Republicans in the conference, [told Politico](#) of McCarthy's plan, "I haven't seen all the details, but I am excited about it. ...I am really looking forward to a unified Republican conference. I really am. I want to see that happen." It's not that McCarthy gave Greene and the furthest rightwing members the pen to write the agenda. It was a team effort that included ranking members of committees and other intellectual forces within the party. A unified agenda and a victory in the midterms would give McCarthy a good start. There are rumblings that the House Freedom Caucus will want to force McCarthy's hand before the vote for speaker. Perhaps that is possible depending on the margin of victory, but the far right caucus is not what it once used to be. **It's worth remembering a unified agenda for an election has become a unified agenda for a Congress.** Gingrich's Contract with America, Paul Ryan's "A Better Way," and Pelosi's "For The People" agenda were all messaging that turned into legislation. When there's unified control of government, that legislation can become law. It's premature to say with certainty how McCarthy's speakership will unfold and how he will deal with basic duties like ensuring the government is funded and the debt ceiling is lifted/suspended. But the CW with McCarthy, just like with Biden, may be contemptuously wrong.

House

The House will reconvene at 9:00 a.m. and will consider the Mental Health Justice Act, which would create a new grant program to send mental health professionals instead of police officers to certain types of mental health emergencies; the Invest to Protect Act, which would create a new grant program for small police departments for police officer training and access to mental health resources as well as for improving recruitment and retention; the Break the Cycle of Violence Act, which would create new grant programs to support community-based violence intervention initiatives; and the Violent Incident Clearance and Technological Investigative Methods (VICTIM) Act, which would create a new grant program to help police departments clear (i.e., close) open cases.

Senate

The Senate will reconvene at 10:00 a.m. and will resume consideration of the DISCLOSE Act, which would expand campaign finance disclosure requirements. At 11:30 a.m., the Senate will hold a procedural vote on the DISCLOSE Act. If the procedural vote fails, the chamber will hold a procedural vote on the nomination of Amanda Bennett to be chief executive officer of the US Agency for Global Media and at 1:45 p.m. will hold a final confirmation vote on the nomination of Arati Prabhakar to be director of the Office of Science and Technology Policy.

White House

President Biden will hold a bilateral meeting in New York City with Filipino President Ferdinand Romualdez Marcos Jr. at 11:00 a.m. At 2:15 p.m., the president will receive a briefing on Hurricane Fiona's impact on Puerto Rico and the ongoing federal government response. At 4:40 p.m., Biden will participate in a Democratic National Committee reception. At 5:55 p.m., the president will depart en route to the White House where he is expected to return at 7:45 p.m.

Macroeconomic

At 9:00 a.m., the Atlantic will continue its 2022 Atlantic Festival. [More information here.](#) Expected participants include:

- Janet Yellen, secretary, Department of the Treasury
- Senator Chris Murphy (D-CT)

At 9:00 a.m., the House Oversight and Reform Committee Subcommittee on Economic and Consumer Policy will hold a hearing titled "Power and Profiteering: How Certain Industries Hiked Prices, Fleeced Consumers, and Drove Inflation."

At 12:00 p.m., the Urban-Brookings Tax Policy Center will hold a virtual discussion titled "The Prescription: Fiscal Policy for Today." [More information here.](#)

Agriculture

At 10:00 a.m., the Senate Agriculture, Nutrition, and Forestry Committee will hold a hearing on the nominations of Jose Esteban to be Agriculture undersecretary for food safety, Vincent Logan to be a member of the Farm Credit Administration's Farm Credit Administration Board, and Alexis Taylor to be Agriculture undersecretary for trade and foreign agricultural affairs.

Cryptocurrency

At 3:30 p.m., the Brookings Institution will hold a virtual discussion titled “Crypto, digital assets, and the future of the payments system.” [More information here.](#)

Expected participants include:

- Nellie Liang, undersecretary for domestic finance, Treasury Department

Energy, Environment, and Natural Resources

At 8:00 a.m., the International Energy Agency will begin its Global Clean Energy Action Forum. [More information here.](#) Expected participants include:

- Jennifer Granholm, secretary, Department of Energy
- John Kerry, special presidential envoy for climate change, State Department

At 9:00 a.m., the United States Energy Association will hold its fourth virtual Advanced Energy Technology Forum. [More information here.](#) Expected participants include:

- Jennifer Granholm, secretary, Department of Energy

At 10:00 a.m., the Senate Energy and Natural Resources Committee will hold a hearing titled “Opportunities and Challenges in Deploying Innovative Battery and Non-Battery Technologies for Energy Storage.”

Financial Services

At 9:00 a.m., Bloomberg Live will hold a virtual event titled “The Future Investor: A New Investment Class.” [More information here.](#)

At 9:00 a.m., the House Financial Services Committee Subcommittee on Housing, Community Development, and Insurance will hold a hearing titled “State of Emergency: Examining the Impact of Growing Wildfire Risk on the Insurance Market.”

At 9:30 a.m., the Senate Banking, Housing and Urban Affairs Committee will hold a hearing titled “Annual Oversight of the Nation's Largest Banks.” [More information here.](#) Expected participants include:

- Charles Scharf, CEO and president, Wells Fargo & Company
- Brian Moynihan, chairman and CEO, Bank of America
- Jamie Dimon, chairman and CEO, JPMorgan Chase & Co.
- Jane Fraser, CEO, Citigroup
- William Rogers Jr., chairman and CEO, Truist Financial Corporation
- Andy Cecere, chairman, president, and CEO, US Bancorp
- William Demchak, chairman, president, and CEO, PNC Financial Services Group

Geopolitical

At 10:30 a.m., the Wilson Center's Kissinger Institute on China and the United States will hold a discussion titled “Beijing's Dollar Decoupling Plans.” [More information here.](#)

Healthcare

At 2:00 p.m., Health Affairs will hold a virtual briefing titled "Physician Burnout, Workforce Strain, And Lessons From COVID-19." [More information here.](#)

Housing

At 10:00 a.m., the House Homeland Security Committee Subcommittee on Oversight, Management, and Accountability will hold a hearing titled "Federal Building Security: Examining the Risk Assessment Process."

Judicial

At 9:00 a.m., the Senate Judiciary Committee will hold a markup of the Journalism Competition and Preservation Act and vote on the nominations of Cindy Chung and Tamika Montgomery-Reeves to be US circuit judges for the Third Circuit; Kelley Hodge, John Murphy, Mia Perez, and Kai Scott to be a US district judges for the Eastern District of Pennsylvania; Thomas Brown to be a US marshal for the Northern District of Georgia; and Kirk Taylor to be US marshal for the District of Colorado.

Transportation

At 3:00 p.m., the Urban Institute will hold a virtual discussion titled "Autonomous Vehicle Policy and Regulations: A Discussion on the Current Landscape and Future of AVs (autonomous vehicles)." [More information here.](#)



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