

October 3, 2023

WASHINGTON POLICY STRATEGY

Potomac Perspective

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The surprising move over the weekend that averted a government shutdown should be a positive for the markets as it alleviates fears of dysfunction in Washington – at least temporarily. It is likely, however, that there will be a move to remove Speaker Kevin McCarthy from his position, and the budget standoff could be reengaged in 45 days, so the era of good feelings might be short lived.

The Supreme Court's new term starts this week and includes a key case regarding the Consumer Financial Protection Bureau. The Court might also decide to hear a case regarding New York's rent control laws.

GOVERNMENT STAYS OPEN – NEXT STEPS

In a surprising turn of events, House Speaker Kevin McCarthy offered a “clean” Continuing Resolution (CR), which easily passed the House and Senate and will keep the government open for 45 days. **The sudden change in tactics is a positive for the markets. Although we do not believe a shutdown would have been a negative for financial markets, the sudden change in course could be well received by the markets since:**

1. Any disruptive impacts from a shutdown have been avoided (at least temporarily); and
2. It changes the narrative (again, at least temporarily) of government dysfunction. McCarthy showed leadership.

The vote to keep the government open is not risk free as it will now tee up a motion to remove Mr. McCarthy as Speaker, and Congress will either have to pass individual appropriations bills within the next 45 days or go through this exercise again.

I Want my MTV

Representative Matt Gaetz (R-Florida) has said that he will offer a Motion to Vacate (MTV) the Speaker's chair and remove McCarthy as Speaker. The motion needs a simple majority to pass. While **it appears that Speaker McCarthy will survive this round**, he could have difficulty surviving subsequent MTVs (and Representative Gaetz or others could try more than once), since the price of Democratic assistance could increase over time. For now, there are probably around 10 Republican votes to remove McCarthy. At least 200 House Republicans will support him. Many, if not most, Democrats, especially progressives, will probably vote to remove McCarthy. However, another block of Democrats is less willing to remove McCarthy. They are either reluctant to contribute to the ensuing political chaos (lest voters blame them for Washington's dysfunction) or are wary of who might succeed McCarthy (the devil you know...). **Thus, enough House Democrats could vote “no” or “present” on the MTV to keep McCarthy in the Speaker's Chair (for now).**

See You in 45 Days

The CR provides Congress additional time to pass individual spending bills. Based on the experience of the past few months, odds are low that Congress will be able to finish work on these bills (there are significant disagreements between the House and Senate on each appropriations bill), so Congress will probably have to pass another CR in 45 days or face the threat of a shutdown again.

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This past weekend shows that there is little appetite among congressional leaders for a shutdown. However, many in the Republican base are pushing their elected Representatives for a fight with the Biden administration over the border and spending, while some in Congress (especially in the Senate) will push for more aid for Ukraine which is opposed by a growing number of House Republicans. **Averting a shutdown this weekend was a positive, but the CR only delays some big political fights for a few weeks.**

NEW SUPREME COURT TERM – POTENTIALLY MARKET IMPACTFUL CASES

The United States Supreme Court opens a new term this week, and there are several cases that could impact the financial services sector. We highlight two – one regarding the Consumer Financial Protection Bureau (CFPB) and another which could impact New York State rent control laws.

CFPB Funding Case

The CFPB receives its funding from the Federal Reserve Board (Fed) rather than via a direct appropriations from Congress or from fees levied on regulated institutions. The Fed also does not receive funding directly from Congress as it funds itself by fees and open market operations. The “double insulation” from Congressional supervision of the CFPB’s funding has been ruled unconstitutional by a lower court (and constitutional by another), so the Supreme Court will hear arguments this month on the case and probably issue its decision in 2024.

The Court has been limiting the deference given to executive branch agencies and emphasizing congressional oversight of the executive branch. The unique funding structure of the CFPB could face significant skepticism from the Court, especially the Republican appointees. Many agencies, such as the Fed, do not receive appropriations from Congress and, instead, self-fund. The CFPB’s situation is unique as few, if any, other agencies receive their funding from another agency.

If the Court rules the CFPB’s funding structure is unconstitutional, Congress would need to decide how to fund the agency in the future. It is unlikely, however, that existing CFPB regulations and enforcement actions would be overturned. The Court would probably view that remedy as too chaotic. A new funding structure, especially a direct congressional appropriation, would be viewed as a positive by investors. A direct appropriation would be seen by investors as giving Congress more oversight and influence over the CFPB.

New York Rent Control Law

As of this writing, the Court might announce soon whether or not it will hear a case regarding New York State’s rent control laws. Litigants in a case have petitioned the Court to hear a case about whether New York’s rent control law prevents:

1. Property owners from regaining exclusive possession and control of their property; and
2. Whether by setting rents according to a tenant’s ability to pay, the law forces a group of owners “alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole,” and is, thus, an unconstitutional taking of property.

Four Justices are needed in order to grant *certiorari* and hear the case. If the Court agrees to hear the case, **the outcome on the merits would be tough to handicap.** The three Democratic appointees on the Court would likely vote to uphold New York’s law

while some of the conservatives might be split. If the Court decides that New York’s law constitutes a “taking” of property, it could rule the state must compensate landlords rather than just strike down the law. It would then be up to the New York legislature to figure out just compensation. Oral arguments could be heard in early 2024 if the Court accepts the case. A decision to hear the case could be positive for multifamily lenders.

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