



GIBSON DUNN

New Congress and New
Administration: A Different
Legislative and Policy
Landscape for Companies

January 22, 2021

Agenda

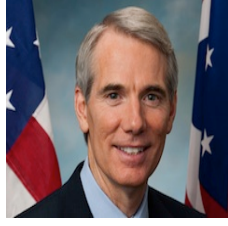
- 1. Congressional Landscape**
- 2. Administration's New Landscape**
- 3. Financial Services**
- 4. Antitrust**
- 5. Consumer Protection/Privacy**
- 6. Questions**

LAY OF THE LAND IN THE 117TH CONGRESS (SENATE)

Homeland Security & Gov. Affairs



Gary Peters
(D-MI)

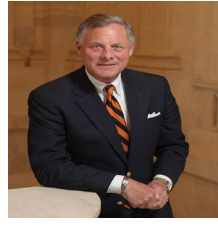


Rob Portman
(R-OH)

Health, Education, Labor & Pensions



Patty Murray
(D-WA)



Richard Burr
(R-NC)

Armed Services



Jack Reed
(D-RI)



Jim Inhofe
(R-OK)

Commerce, Science & Transportation

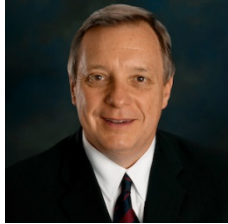


Maria Cantwell
(D-WA)



Roger Wicker
(R-MS)

Judiciary



Dick Durbin
(D-IL)



Charles Grassley
(R-IA)

Finance



Ron Wyden
(D-OR)



Mike Crapo
(R-ID)

Banking, Housing & Urban Affairs

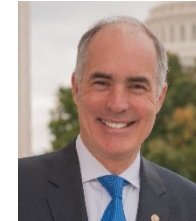


Sherrod Brown
(D-OH)



Pat Toomey
(R-PA)

Aging



Bob Casey
(D-PA)



Tim Scott
(R-SC)

Agriculture



Debbie Stabenow
(D-MI)



John Boozman
(R-AR)

Appropriations



Patrick Leahy
(D-VT)



Richard Shelby
(R-AL)

Budget



Bernie Sanders
(I-VT)

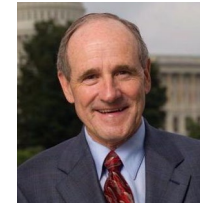


Lindsay Graham
(R-SC)

Foreign Affairs



Bob Menendez
(D-NJ)



James Risch
(R-ID)

LAY OF THE LAND IN THE 117TH CONGRESS (HOUSE)

Labor & Education



Bobby Scott
(D-VA)

Virginia Foxx
(R-NC)

Transportation



Peter DeFazio
(D-OR)

Sam Graves
(R-MO)

Appropriations



Rosa DeLauro
(D-CT)

Kay Granger
(R-TX)

Energy & Commerce



Frank Pallone
(D-NJ)

Cathy
McMorris
Rodgers
(R-WA)

Financial Services



Maxine Waters
(D-CA)

Patrick McHenry
(R-NC)

Oversight & Government Reform



Carolyn
Maloney
(D-NY)

James Comer
(R-KY)

Homeland Security



Bennie
Thompson
(D-MS)

Mike Rogers
(R-AL)

Judiciary



Jerrold
Nadler
(D-NY)

Jim Jordan
(R-OH)

Ways & Means



Richard Neal
(D-MA)

Kevin Brady
(R-TX)

Science, Space & Technology



Eddie Bernice
Johnson
(D-TX)

Frank Lucas
(R-OK)

The Senate Confirmation Process

- Nominees are subject to lengthy questionnaires from the Senate Committee in charge of their nomination as well as FBI background checks.
- Nominees must also clear any ethical concerns related to financial entanglements – a lengthy financial disclosure report is required to be filed with the Office of Government Ethics detailing all assets, liabilities, and sources of income.
- Only one nomination hearing (DoD) is scheduled before President-elect Biden is sworn in, the rest will likely occur towards the end of January and early February.
- With Democrats now gaining Senate Majority (and chairmanships of committees overseeing nominations), few, if any, roadblocks are expected.
 - Due to recent rule changes, filibusters can now be broken with a simple majority vote, thus Republicans are unlikely to block any nominees unless they can peel off some Democrats.



Key Appointments: Ron Klain, White House Chief of Staff

- ***Background***

- Served as White House Ebola Response Coordinator
- Served as Biden's first chief of staff when he became Vice President
- Served as chief of staff for Vice President Al Gore
- Served as associate counsel to President Bill Clinton in charge of judicial selection
- Worked at Revolution LLC and was a partner at O'Melveny & Myers



Major Pillars of the Biden Administration Agenda

- Climate Change
 - Economic Relief
 - Pandemic Relief
 - Racial Justice
- These themes will carry across various agencies of the incoming administration and the individuals chosen to lead and shape those agendas.

Key Appointments: Merrick Garland, Attorney General

Background

- Currently serves on the United States Court of Appeals for the District of Columbia, where he was Chief Judge for seven years
- Veteran of the Department of Justice and served as Deputy Assistant Attorney General for the Criminal Division and Principal Associate Deputy Attorney General
- Investigated and tried cases involving public corruption, drug trafficking, and fraud.



Likely Priorities

- Restore public confidence in DOJ as non-partisan and non-political
- Likely to revert to the Obama-era DOJ approach of aggressive enforcement of the financial sector, including holding executives, not just corporations, responsible for wrongdoing.
- Expected to beef up Civil Rights Division and aggressively investigate suspected instances of police brutality

Key Economic Appointments: Janet Yellin, Treasury Secretary

Background

- Served as the Chair of the Federal Reserve from 2014 to 2018, and as Vice Chair from 2010 to 2014
- Previously, served as President and Chief Executive Officer of the Federal Reserve Bank of San Francisco; Chair of the White House Council of Economic Advisers under President Bill Clinton; Federal Reserve Board Governor; and business professor at the University of California, Berkeley, Haas School of Business.



Likely Priorities

- Replenish the Treasury's ranks, including the Domestic Finance division.
- Front and center on any further government stimulus packages
- May get tougher on banks: last action as Fed Chief was crackdown on Wells Fargo

Key Economic Appointments: Mayor Marty Walsh, Department of Labor Secretary

Background

- Currently the Mayor of Boston, Walsh's nomination enjoyed wide support from major unions such as the AFL-CIO's two largest affiliates the AFT and the American Federation of State, County and Municipal Employees.
- Prior to becoming Mayor, Walsh was a state representative and head of the Boston Building Trades Council, a union group.
- Has a close personal friendship with President-elect Biden, who spoke at Mayor Walsh's 2017 inauguration. If confirmed, Mayor Walsh will be the first labor union member to serve in the role in half century.



Likely Priorities

- The immediate focus will be providing support to the millions of unemployed Americans.
- Expect a robust repeal and replace regulatory agenda and increased enforcement of laws governing the relationship between business and labor.

Key Economic Appointments: Gov. Gina Raimondo, Commerce Secretary

Background

- Currently the governor of Rhode Island, she has served in that position since 2015.
- Previously served as General Treasurer of Rhode Island.
- Prior to entering government, Governor Raimondo worked at a venture capital fund backed by Bain Capital before starting her own investment fund, Point Judith Capital.



Likely Priorities

- Expected to focus heavily on relationship and competition with China.
- Encouraging trade that emphasizes protecting the environment and combatting climate change
- Post-COVID-19 pandemic economic recovery

Other Top Agencies To Watch

- **Health and Human Services – Xavier Becerra**

- COVID-19 response and vaccine distribution
- Protecting and expanding the Affordable Care Act, which may include additional regulation of healthcare industry
- Reproductive rights and women's access to healthcare



- **U.S. Trade Representative – Katherine Tai**

- Expected to advance policies more closely aligned with free trade
- Will play a key role in any deal to rejoin TPP, which Biden has pledged to renegotiate.



- **Chair, Securities and Exchange Commission**

- *In the running:* Former SDNY U.S. Attorney Preet Bharara, former CFTC chief Gary Gensler



- **Director, Consumer Financial Protection Bureau**

- *In the running:* FTC commissioner Rohit Chopra, Rep. Katie Porter (D-CA), CFPB fair lending director Patrice Ficklin



Key Issue: Financial Services

Landscape: President-elect Biden and congressional Democrats have pledged to increase financial regulation, consider banking-related legislation, and bring more enforcement actions against the financial services industry.

Congress:

Now that Democrats control the senate, expect discussion of the following issues:

- Updated Glass-Steagall: Biden-Sanders Task Force plan calls for expanding separation between retail banking institutions and investment banking. The 2020 Democratic Party Platform expressly supported “an updated and modernized version of Glass-Steagall.”
- Strengthening Dodd-Frank: Biden-Sanders plan calls for strengthening Dodd-Frank Act, particularly on consumer lending, including credit cards. Unclear whether Biden Administration will do so through legislation or regulatory action.
- Financial Access to Underserved Communities: Democrats will likely focus on legislation that ensures banks and financial institutions offer services to help low-income communities and demographics traditionally underserved by the industry. This may include creating a Public Credit Reporting Agency within the Consumer Financial Protection Board to provide borrowers with a government option in lending.
- Relieving Student Loan Debt: Proposals include forgiveness of up to \$10,000 of student debt per borrower; pauses in monthly payments and interest accruals.

CREDIT REPORTING

4 takeaways from Biden's embrace of progressive banking policies

POLITICS | ELECTION 2020

Biden Urges Bigger Role for Fed in Addressing Racial Wealth Gap

Key Issue: Financial Services

Executive Branch: The Biden campaign did not prioritize financial services issues, so his policy remains uncertain. Even so, the Executive branch of the Biden Administration will likely focus on the following areas.

- Volcker Rule: Under the Trump Administration, Volcker Rule was changed. Democratic Platform calls for strengthening the Volcker Rule.
- Enhanced Regulation: Biden Administration is likely to roll back deregulatory efforts of Trump Administration and enhance financial regulation.
- Strengthened Capital Requirements: Biden Administration may focus on tightening leverage requirements for banks and financial institutions.
- **Enforcement and Oversight:**
 - Biden Administration will likely bring additional enforcement actions against financial services companies, advisors, and investors as well as seek harsher penalties. Biden-Sanders Task Force Recommendations call for criminal penalties under Dodd-Frank as well as holding financial institutions accountable for discriminatory lending practices in the housing market.
 - The Consumer Financial Protection Bureau is expected to have an enhanced role and increased enforcement actions. Following the Supreme Court's decision in *Seila Law v. CFPB*, Biden will have the ability to remove Director Kathleen Kraninger and can appoint a new director through the Federal Vacancies Reform Act of 1998.
 - A CFPB under Biden's leadership is expected to pass emergency rules to assist Americans suffering financial hardships in the pandemic and increase rulemaking through enforcement in relation to broker-dealer regulations.

Key Issue: Antitrust

Landscape: There is a growing bi-partisan consensus that we have a “concentration” problem in certain sectors of the U.S. economy. President Biden, a Democratic-controlled Congress, and a Democratic-lead DOJ Antitrust Division and FTC will likely take a more aggressive stance with respect to antitrust legislation and enforcement.

Congress:

U.S. House of Representatives



David Cicilline (D)-RI

Chair, Subcommittee on Antitrust



Press Releases

Judiciary Antitrust Subcommittee Investigation Reveals Digital Economy Highly Concentrated, Impacted By Monopoly Power
Clear and Compelling Need to Strengthen Antitrust Enforcement and Consider a Range of Forceful Options, Including Structural Separations and Prohibitions on Anticompetitive Conduct

Washington, October 6, 2020

Senate



Amy Klobuchar (D)-Minn.

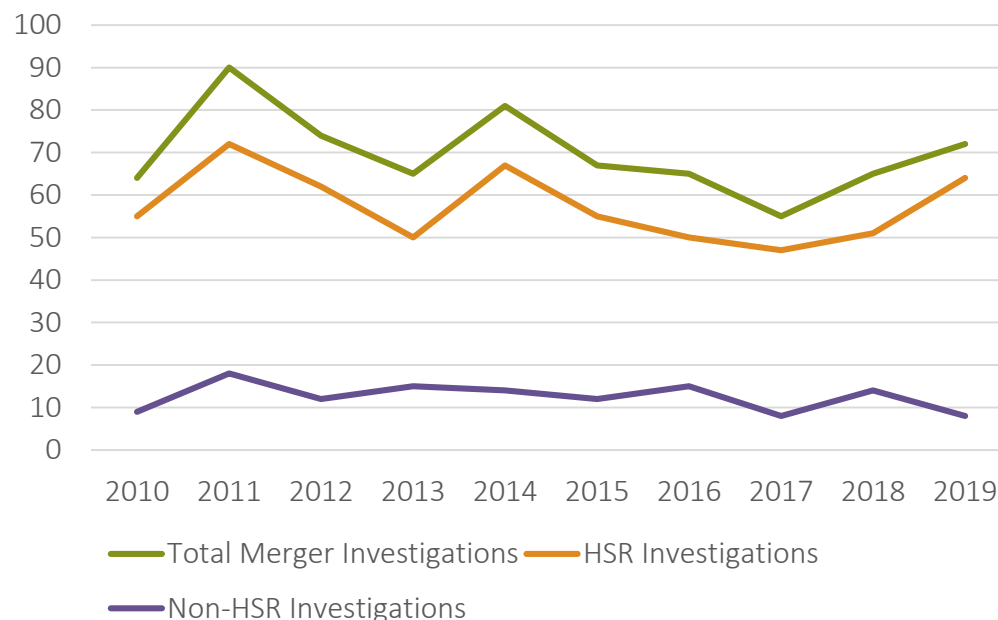
Incoming Chair, Subcommittee on Antitrust

- Anticompetitive Exclusionary Conduct Prevention Act of 2020 – would shift significant burdens to defendants in monopolization cases.
- Monopolization Deterrence Act of 2020 – would give FTC and DOJ ability to impose civil fines on monopolistic conduct.

Key Issue: Antitrust

- **Merger Enforcement:** The Biden Administration will likely engage in active merger enforcement, including a higher frequency of Second Requests and court challenges than that of the last four years. Mergers in health care, technology, and agricultural sectors—as well as potentially telecommunications, media, and financial services industries—are expected to receive especially close scrutiny. Agencies may also conduct a retrospective review of certain mergers, and explore using more novel theories of harm.

Federal Merger Investigations



“We will direct federal regulators to review a subset of the mergers and acquisitions that have taken place since President Trump took office, prioritizing the pharmaceutical, health care, and agricultural industries, to assess whether any have increased market concentration, demonstrably harmed workers, increased racial inequality, or reduced competition, and assign appropriate remedies.”

—Biden-Sanders Unity Task Force
Recommendations

Key Issue: Antitrust

- **Platform Investigations and Litigation:** Conduct by platforms with high market shares will likely remain a key focus for the federal antitrust agencies, as they seek to re-assert their global leadership in pursuing monopolization cases. Under the new Administration, the agencies may reassess the currently pending actions against Google (DOJ) and Facebook (FTC), but the cases will continue full-steam ahead and will likely occupy a significant portion of the agencies' resources, absent expansion.



FTC Sues Facebook for Illegal Monopolization

December 9, 2020

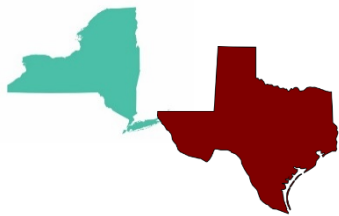
Agency challenges Facebook's multi-year course of unlawful conduct

FOR IMMEDIATE RELEASE

Tuesday, October 20, 2020

Justice Department Sues Monopolist Google For Violating Antitrust Laws

Department Files Complaint Against Google to Restore Competition in Search and Search Advertising Markets



Google hit with its third antitrust lawsuit since October, this time by a bipartisan coalition of states

Key Issue: Antitrust

- **Emphasis on Labor Rights:** Given President Biden’s reputation as a supporter of unions and workers’ rights, it is reasonable to expect that the DOJ will continue—if not strengthen—its prosecution of labor-market restraints, including wage-fixing and “no-poach” agreements. We may also see federal legislation that aims to end the use of “no-poach” and “non-compete” agreements for certain workers.



JUSTICE NEWS

Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE

Thursday, January 7, 2021

Health Care Company Indicted for Labor Market Collusion

FOR IMMEDIATE RELEASE

Thursday, December 10, 2020

Former Owner of Health Care Staffing Company Indicted for Wage Fixing

Antitrust Division Remains Committed to Prosecuting Collusion in Labor Markets



Joe Biden @JoeBiden · Dec 23, 2019

It's simple: companies should have to compete for workers just like they compete for customers. We should get rid of non-compete clauses and no-poaching agreements that do nothing but suppress wages.



Non-Compete Clauses Are Suffocating American Workers
American workers are burdened by non-compete clauses that restrict people's freedom
[@time.com](#)


FTC Consumer Protection Enforcement



- Anticipated Leadership Changes
- Potential Legislation
- FTC Budget and Resource Allocation Decisions
- Cooperation with Revitalized CFPB and Other Regulators

Commissioner	Party	Term
Joseph J. Simons (Chairman)	R	5/1/18 – 9/25/24
Rebecca Kelly Slaughter	D	5/2/18 – 9/25/22
Noah Joshua Phillips	R	5/2/18 – 9/25/23
Christine S. Wilson	R	9/25/18 – 9/25/25
Rohit Chopra	D	5/2/18 – 9/25/19



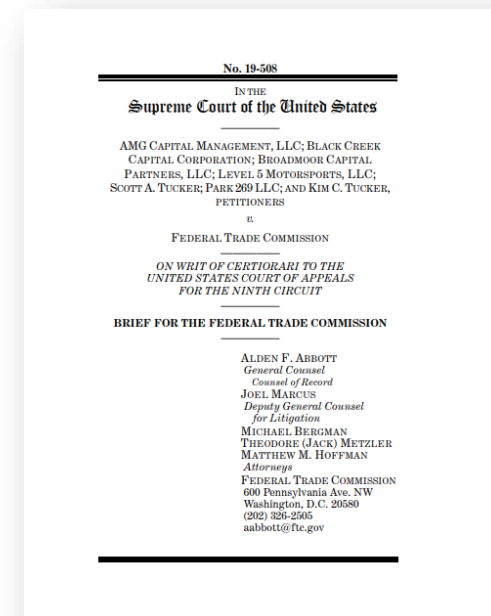
Christine S. Wilson  @CSWilso... · Jan 4 ...
I look forward to meeting the challenges of this new year in @FTC's mission to protect consumers. I hope that Congress takes the opportunity to do its part by passing comprehensive federal #privacy legislation in 2021.





FTC: Anticipated Consumer Protection Priorities

- Increased pursuit of monetary relief
- Increased use of consumer protection rulemaking
- Increased pursuit of individual liability for corporate leaders
- Increased reliance on unfairness theories, including with respect to data security



FTC: Anticipated Consumer Protection Priorities



- Increased pursuit of platform liability
- Increased scrutiny of algorithms that use consumer data
- Increased scrutiny of privacy issues related to ad targeting
- Expanded focus on children's privacy



Federal Trade Commission ✓

April 9, 2020 · 🌐

"Social distancing," "shelter-in-place," "virtual happy hour" – these are some of the new expressions on everyone's lips the past few weeks. For many kids, parents, and teachers, add "remote learning" or "distance learning" to the list. Because of Coronavirus-related school closures, millions of students are now learning from home.

For parents who are concerned about the privacy and security of their children's personal data while they're learning online, here are some things to know: <https://go.usa.gov/xvDBt>



Rohit Chopra ✓ @chopraftc · Dec 14, 2020

Over the last century, the @FTC has used its Section 6 power to compel information from the meatpacking, tobacco, oil, retail, and other industries to report on practices normally kept secret.

This is a critical tool that the FTC must use more often.



The History of Section 6 Report-Writing At the Feder...
The official website of the Federal Trade Commission, protecting America's consumers for over 100 years.
ftc.gov



Department of Justice



- Leadership Changes

- Anticipated Priorities

- Renewed focus on preserving the integrity of the department and guarding its investigations and prosecutions from undue partisan influence
- Continued emphasis on combatting fraud against consumers and corporate fraud that victimizes the general public, particularly in the healthcare field
 - **COVID-19 Hoarding and Price Gouging Task Force**, established in March 2020 to address COVID-19-related market manipulation, hoarding, and price gouging.
 - **National Rapid Response Strike Force**, established in September 2020. Charged with investigating and prosecuting fraud cases involving major healthcare providers.

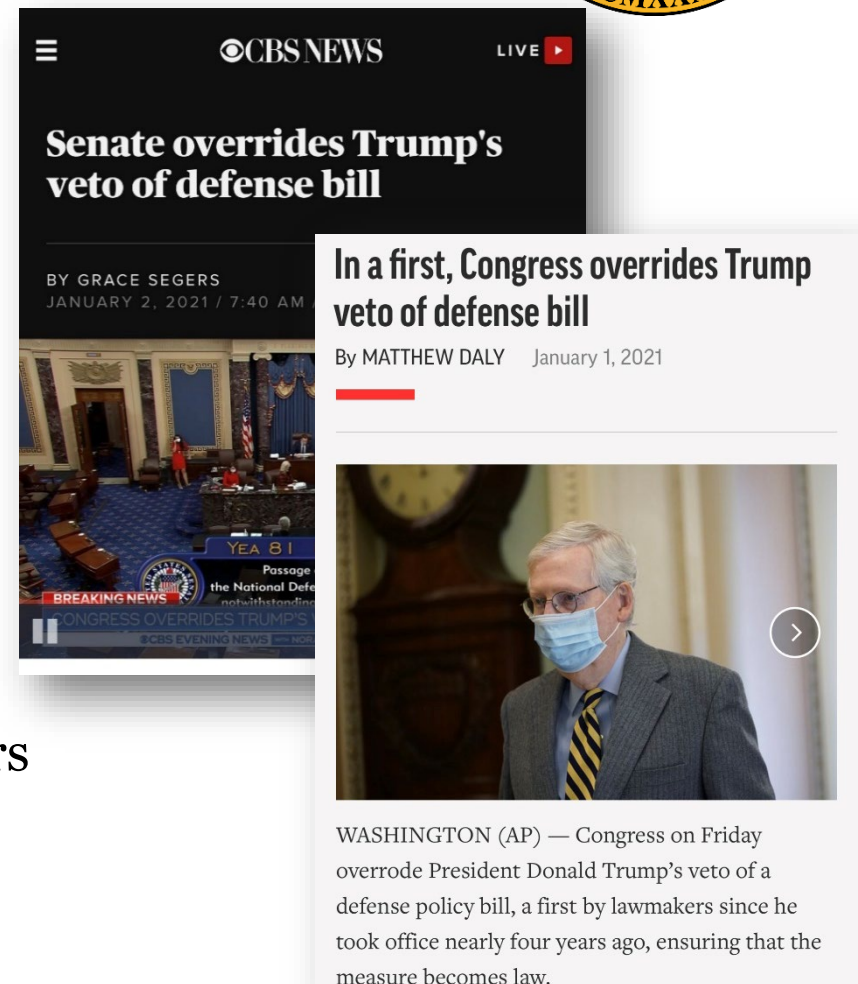
“This Office, together with the Department’s COVID-19 Hoarding and Price Gouging Task Force, is working tirelessly to ensure that scam artists who seek to capitalize on the worldwide pandemic will be brought to justice.”

– Richard P. Donoghue, U.S. Attorney for the Eastern District of New York

Securities & Exchange Commission



- Leadership Changes
- Legislative Changes
 - National Defense Authorization Act strengthens SEC's ability to pursue disgorgement
- Priorities
 - Investigating/responding to misconduct related to COVID-19
 - Increasing oversight of broker-dealers and investment advisors
 - Bringing aggressive enforcement actions



Department of Health and Human Services



- HIPAA enforcement a priority
- Continued emphasis on right of access enforcement
- Reinvigorated HIPAA audit program
- Privacy Rule revisions to address sharing patient information
- Potential new legislation addressing telehealth privacy

Health Insurer Pays \$6.85 Million to Settle Data Breach Affecting Over 10.4 Million People

HIPAA Business Associate Pays \$2.3 Million to Settle Breach Affecting Protected Health Information of Over 6 million Individuals

HHS Proposes Modifications to the HIPAA Privacy Rule to Empower Patients, Improve Coordinated Care, and Reduce Regulatory Burdens

Orthopedic Clinic Pays \$1.5 Million to Settle Systemic Noncompliance with HIPAA Rules

OCR Issues Bulletin on Civil Rights Laws and HIPAA Flexibilities That Apply During the COVID-19 Emergency

OCR Settles Thirteenth Investigation in HIPAA Right of Access Initiative

Consumer Financial Protection Bureau



“Reverse the Trump administration’s efforts to weaken the CFPB” and “hold financial institutions accountable for discriminatory practices.” - WSJ 10/21/20

- Transition Review

- Leandra English

- Enforcement Actions

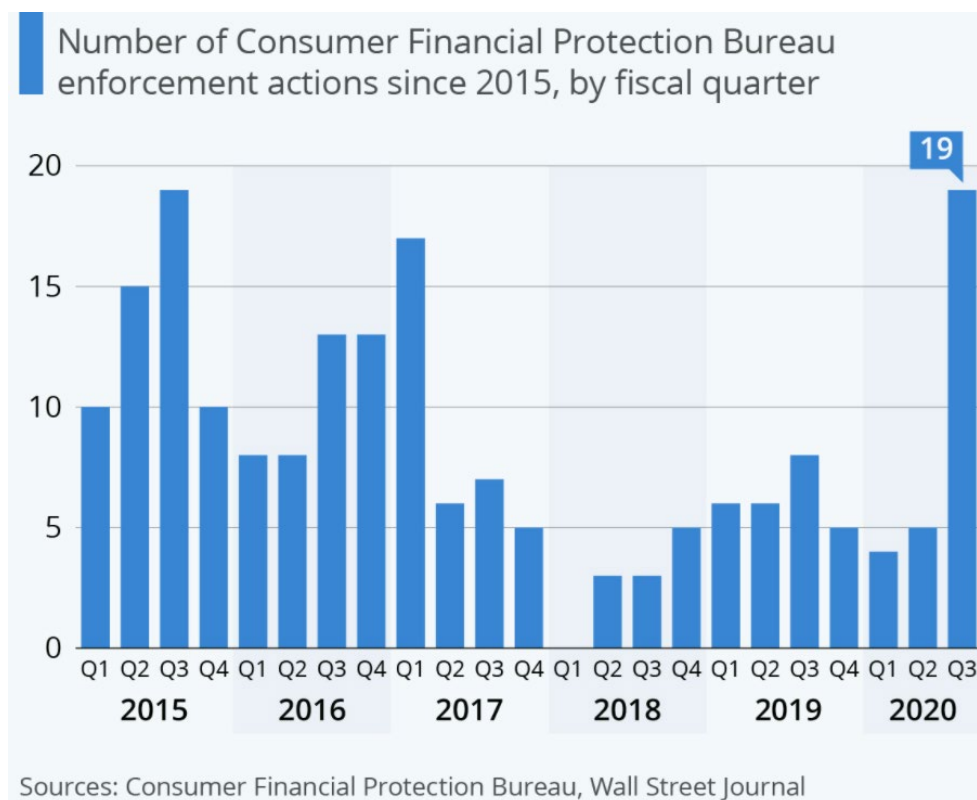
- Ramp up in frequency and scale expected, and heftier fines against broader range of financial firms

- Regulatory Priorities

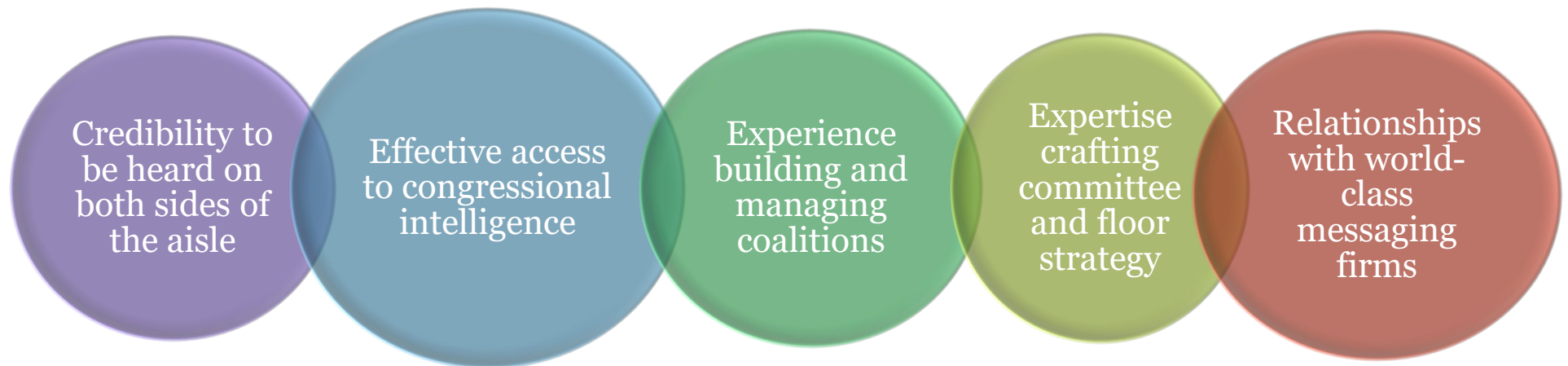
- CARES Act and COVID-19 relief
- Rulemaking

- Structural

- Increased federal/state cooperation



The Gibson Dunn Advantage



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