

January 25, 2019

Washington Update

This Week In Congress

House – The House passed H.J. Res. 31 “**Making further continuing appropriations for the Department of Homeland Security for fiscal year 2019, and for other purposes;**” “H.J. Res. 28 “**Making further continuing appropriations for fiscal year 2019, and for other purposes;**” and H.R. 328 “**To require the Secretary of State to design and establish a Vulnerability Disclosure Process (VDP) to improve Department of State cybersecurity and a bug bounty program to identify and report vulnerabilities of internet-facing information technology of the Department of State, and for other purposes.**”

Senate – The Senate passed H.R. 430: **to extend the program of block grants to States for temporary assistance for needy families and related programs through June 30, 2019 and the continued consideration of S.1, Strengthening America's Security in the Middle East Act of 2019.**

Next Week In Congress

House – The House schedule for next week can be found [HERE](#).

Senate – The Senate schedule for next week can be found [HERE](#).

TAX

Treasury Secretary Mnuchin Declines to Appear at Hearing

Key Point:

- *Treasury Secretary Mnuchin declined to appear before House Ways and Means Committee to discuss the effects of the government shutdown but indicated that he would be willing to appear once the Administration's budget proposal is released.*

Last week, House Ways and Means Committee Chairman Richard Neal (D-MA) invited Department of Treasury Secretary Steven Mnuchin to testify before the committee on the

effects of the government shutdown. Mnuchin declined to appear before the committee this week, offering other officials who were closer to the IRS management issues. The refusal ultimately led to Chairman Neal cancelling the hearing. Secretary Mnuchin, however, did indicate that he would be willing to appear before the committee soon when the Administration's budget proposal is released,

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which is expected in the coming weeks.

Opportunity Zone Letter

Key Points:

- *A bipartisan group of lawmakers sent a letter to Secretary Mnuchin addressing proposed regulations for the Opportunity Zone provision of TCJA.*
- *Specifically, the letter states that the requirement that says a company within an Opportunity Zone who gets 50 percent of its business from within that zone needs to be addressed.*

A group of 16 lawmakers that introduced the Opportunity Zone provision in the Tax Cuts and Jobs Act (TCJA) recently [reached](#) out to Treasury Secretary Mnuchin to offer recommendations to the agency's proposed regulations on a program that offers tax advantages for those who put money into areas in need of economic development.

Specifically, the letter states that the requirement that says a company within an Opportunity Zone who gets 50 percent of its business from within that zone needs to be addressed, because it has the potential to limit businesses that can meet a standard if the standard is drawn to tight.

Senator Elizabeth Warren Proposes High Wealth Asset Tax

Key Point:

- *Senator Elizabeth Warren (D-MA) proposes 2-percent tax on individuals with assets over \$50 million and an extra 1-percent tax (3 percent total) for those with wealth over \$1 billion.*

This week, Senator Warren (D-MA) proposed a tax on high-end wealth, focusing on assets and not income. Specifically, her plan called for a 2

percent tax on those with assets over \$50 million and an extra 1 percent tax (for a total of 3 percent) on those with wealth over \$1 billion. The plan is projected to raise roughly \$2.75 trillion in revenue over 10 years. According to economists from UC Berkeley, only 75,000 individuals would be subject to this new tax. The conservative leaning Tax Foundation said the plan “really comes down to the politics of envy and whether or not we should be increasing taxes on the wealthy more than they already are.” However, the proposal certainly represents a wealth tax platform that more progressive Democrats could support.

For more information about tax issues you may [email](#) or call Christopher Hatcher at 202-659-8201. Henry Homans contributed to this section.

FINANCIAL SERVICES

House Financial Services Committee Announces Subcommittee Leadership

Key Point:

- *The Committee announced the chairs and ranking members for their subcommittees in the 116th Congress.*

On January 24, the House Financial Services Committee Majority and Minority issued press releases announcing the subcommittee [chairs](#) and [ranking members](#) for the 116th Congress. The subcommittee leaders are listed below:

Investor Protection, Entrepreneurship and Capital Markets

Representative Carolyn Maloney (D-NY), Chair
Representative Bill Huizenga (D-MI), Ranking Member

Consumer Protection and Financial Institutions

Representative Gregory Meeks (D-NY), Chair

Representative Blaine Luetkemeyer (R-MO),
Ranking Member

Housing, Community Development and Insurance

Representative William Lacy Clay (D-MO),
Chair

Representative Sean Duffy (R-WI), Ranking
Member

National Security, International Development and Monetary Policy

Representative Emanuel Cleaver (D-MO),
Chair

Representative Steve Stivers (R-OH), Ranking
Member

Diversity and Inclusion

Representative Joyce Beatty (D-OH), Chair

Representative Ann Wagner (R-MO), Ranking
Member

Oversight and Investigations

Representative Al Green (D-TX), Chair

Representative Andy Barr (R-KY), Ranking
Member

The subcommittee chair appointments are subject to approval by the Democratic Steering and Policy Committee and the Democratic Caucus.

For more information about financial services issues you may [email](#) or call Joel Oswald at 202-659-8201. Alex Barcham and Rebecca Konst contributed to the articles.

HEALTH

CMS Publishes Proposed Rule on 2020 Payment Parameters for Plans

Key Points:

- *The Department of Health and Human Services released a new proposed rule on payment parameters and provisions related to*

the Exchanges including changes to formularies and cost sharing for prescription drugs.

- *Comments on the proposal are due February 19, 2019.*

On January 24, the Department of Health and Human Services (HHS) released a [proposed rule](#) entitled “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2020.” Included are proposals to address prescription drug prices by permitting changes to formularies and cost sharing. HHS notes these changes further the Administration’s priority to reduce prescription drugs costs. The aim is to incentivize the use of lower-cost drugs. Comments on the proposed rule are due February 19, 2019.

The proposed rule would allow issuers to update their prescription drug formularies mid-year, subject to applicable state law, beginning with the 2020 plan year when a generic equivalent for a brand drug becomes available. The goal is to increase the use of lower-cost prescription drugs, especially new generic equivalents. The issuer could move the equivalent brand drug to a different tier or remove it from the formulary. Issuers would still need to provide enrollees with the option to obtain the brand name drug under the existing coverage appeal process or exception request process. Before a drug is removed from the formulary or moved to a different tier, issuers must provide notice to all plan enrollees in writing at least 60 days before implementing the change. HHS also seeks comment on the use of therapeutic substitution and reference pricing.

HHS includes an additional proposal allowing a plan that covers both a brand and a generic equivalent to no longer consider the brand drug an essential health benefit (EHB) if the generic drug is available and appropriate for the enrollee. By not considering the brand drug to

be an EHB, the issuer would be permitted to not count the difference in cost sharing between the brand and the generic toward the annual limits on cost sharing. It would still be required to attribute the cost share that would be paid for the generic to the annual limits. The plan must still use an exception process for enrollees to request coverage of the brand drugs. Because the brand drugs would not be considered EHBs, lifetime and annual dollar limits on those drugs may be imposed. HHS offers an alternate proposal under which the issuer would not be attribute any of the enrollee's payment for the brand drug towards the cost sharing limit.

Along with the cost-sharing proposal discussed above, HHS proposes that amounts paid toward cost sharing using direct support from drug manufacturers to reduce out-of-pocket costs are not required to be counted toward the annual limitation on cost sharing for drugs that have a generic equivalent. The goal is to promote prudent prescribing and price competition in the pharmaceutical market.

Upcoming Hearings and Meetings

January 28

Value-Based Pay: The Bipartisan Policy Center will host a discussion on “The Role of Real-World Evidence in Regulatory and Value-Based Payment Decision-making.”

January 29

Drug Pricing: The Senate Finance Hearing will hold a hearing on “Drug Pricing in America: A Prescription for Change, Part I.”

Pre-Existing Conditions: The House Ways and Means Committee will hold a hearing on “Protecting Americans with Pre-Existing Conditions.”

Access: The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “Access to Care: Health Centers and Providers in Underserved Communities.”

Drug Pricing: The House Oversight and Reform Committee will hold hearing on “Examining the Actions of Drug Companies in Raising Prescription Drug Prices.”

January 30-31

Antibiotic Resistance: The Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria will hold a public meeting.

For more information about healthcare issues you may [email](#) or call Nicole Ruzinski Bertsch or George Olsen at 202-659-8201.

TRADE

EU Releases Draft Negotiating Mandate

Key Points:

- The EU's [draft negotiating mandate](#) for a deal with the U.S. calls for a reduction of tariffs on industrial goods and the removal of non-tariff barriers.
- The EU stated that a deal on industrial goods can only be completed if the U.S. removes existing 232 tariffs and agrees to not impose any future tariffs, particularly on automobiles and auto parts.

The EU released its draft negotiating mandate for an EU-U.S. trade deal last Friday. Notably, the draft does not include agriculture as a negotiating objective. Instead, the EU would engage in talks on removing and reducing industrial tariffs and non-tariffs barriers to trade. It is unclear how U.S. negotiators and lawmakers will react to the EU's insistence to

not include agriculture tariffs in any trade negotiations, though, it is unlikely to be accepted. For example, Senate Finance Chairman Grassley has been very critical of the EU position on this issue.

The draft mandate also states that the EU would immediately suspend negotiations if the U.S. imposes Section 232 or 301 tariffs on the EU. This is especially significant given the Commerce Department must deliver its Section 232 report on the national security implications of automobile and auto parts by February 17. EU Trade Commissioner Cecilia Malmström has said the EU is currently preparing a “rebalancing list” of U.S. products that would be subject to tariffs should the EU face new 232 tariffs.

Administration Officials Comment on China Negotiations

Key Points:

- *Economic adviser Larry Kudlow refuted reports that negotiations with China were cancelled because of a lack of progress.*
- *Commerce Secretary Wilbur Ross said China and the U.S. are “miles and miles from getting a resolution” to the ongoing trade dispute.*

Head of the National Economic Council and top Trump Administration economic adviser Larry Kudlow appeared on CNBC Tuesday to dispute reports that the U.S. and China cancelled preparatory trade talks because of a lack of progress (our sources also indicate there was never a meeting). Kudlow went on to say that “promises are great but enforcement is what we want -- things like deadlines and timetables and full coverage of the various structural issues.”

Commerce Secretary Wilbur Ross, also appearing on CNBC Tuesday, took a more pessimistic view of negotiations: “We’re miles

and miles from getting a resolution. Trade is very complicated. There are lots and lots of issues.” Secretary Ross went on to say that he believes there is a “fair chance we do get to a deal.”

Vice Premier Liu He and a Chinese delegation are set to meet with U.S. Trade Representative (USTR) Robert Lighthizer January 30-31. Kudlow suggested these talks “will be determinative.”

For more information about tax issues you may [email](#) or call Christopher Hatcher at 202-659-8201. Riyad Carey contributed to this section.

This Week in Congress was written by Rebecca Konst.