

February 1, 2019

## Washington Update

### This Week In Congress

**House** – The House passed H.R. 56 “The Financial Technology Protection Act;” H.R. 624 “The Promoting Transparent Standards for Corporate Insiders Act;” and H.R. 790 “To provide for a pay increase in 2019 for certain civilian employees of the Federal Government, and for other purposes.”

**Senate** – The Senate considered S. 1 “The Strengthening America's Security in the Middle East Act of 2019.”

### Next Week In Congress

**House** – The House is expected to consider H.R. 876 “The Pacific Northwest Earthquake Preparedness Act;” H.R. 543 “To require the Federal Railroad Administration to provide appropriate congressional notice of comprehensive safety assessments conducted with respect to intercity or commuter rail passenger transportation;” H.R. 450 “The Preventing Crimes Against Veterans Act;” H.R. 507 “The Putting Trafficking Victims First Act;” and H.R. 752 “The Open Book on Equal Access to Justice Act.”

**Senate** – The Senate is expected to continue its consideration of S. 1 “The Strengthening America's Security in the Middle East Act of 2019.”

## TAX

### House Democrats Discuss Tax Plans

#### Key Points:

- *House Ways and Means Democrats hired Andrew Grossman to be their Chief Tax Counsel.*
- *Grossman indicated that Democrats will be cautious with making any changes to a law that they were not involved in writing or passing.*

Andrew Grossman, the Chief Tax Counsel for the House Ways and Means Committee Democrats, said earlier this week that the party is “hesitant” to make corrections to a law that they were not involved in writing or passing –

making reference to the Tax Cuts and Jobs Act (TCJA). He added that any corrections would be subject to “heavy negotiation” between Republicans and Democrats, but that Democrats would be willing to discuss technical corrections as well as broader tax legislation. Other legislative priorities identified by House Ways and Means Democrats include retirement (note the hearing next week) and potential infrastructure enhancements that could require revenue sources such as a gas tax.

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However, House Democratic staff have suggested the revenue sources would not necessarily be confined to gas taxes or other transportation taxes, and could draw from a broad set of sources.

Additionally, Congress must pass extensions of expired tax breaks, including those for railroad track improvements, mortgage insurance premiums, renewable energy installments, and biofuels, in order for taxpayers to claim them during the current tax filing season. Recent discussions and comments suggest that attaching these provisions to the pending spending plans (including border security) is one option both the House and Senate tax writers are considering.

### Senator Bernie Sanders Proposes Estate Tax Expansion

#### Key Points:

- *Senator Bernie Sanders (I-VT) introduced a bill that would expand the estate tax to those who inherit more than \$3.5 million, compared to the \$11 million current threshold, and raise the top rate to 77%.*
- *The bill would raise \$2.2 trillion according to Sanders' office.*

On Thursday, Senator Bernie Sanders (I-VT) introduced a bill that would raise \$2.2 trillion, according to Sanders' office, by applying a 77% tax on estates worth more than \$1 billion and would exempt the first \$3.5 million of any estates from the tax. A summary of the bill can be found [here](#). Republicans last week introduced a bill that would outright eliminate the estate tax, which was narrowed in tax reform in 2017.

Senator Sanders stated; “[a]t a time of massive wealth and income inequality, when the three richest Americans own more wealth than 160 million Americans, it is literally beyond belief

that the Republican leadership wants to provide hundreds of billions of dollars in tax breaks to the top 0.2%.” He added that his bill “does what the American people want by substantially increasing the estate tax on the wealthiest families in this country and dramatically reducing wealth inequality.”

### February 6

**Retirement:** The House Ways and Means Committee will hold its first public hearing entitled: “Improving Retirement Security.” The hearing will take place on Wednesday, February 6, 2019 at 10:00am in 1100 Longworth House Office Building. The hearing is expected to serve as an opening into the subject, discussing how much people are saving and should save, what is working and where retirement can be improved.

### February 7

**President Trump's Tax Returns:** The House Ways and Means Oversight Subcommittee will hold a hearing entitled: “Legislative Proposals and Tax Law Related to Presidential and Vice-Presidential Tax Returns.” The hearing will take place on Thursday, February 7, 2019 at 2:00pm in 1100 Longworth House Office Building. The hearing will be led by Representative John Lewis (D-GA), the chairman of the committee's Oversight Subcommittee.

Last Week, Chairman Richard Neal (D-MA) told reporters that he will proceed with caution on requesting the President's tax returns, despite pressure from liberal groups to make it a priority. Democrats on the committee have been consulting with lawyers to find out how to request that Treasury Secretary Steven Mnuchin release the documents. If Secretary Mnuchin were to block the request, Democrats would likely have to turn to the courts to pursue the returns. Ways and Means

Committee Ranking Member Kevin Brady (R-TX) stated in response; “[d]on’t use a provision designed to protect taxpayer privacy to rummage around in President Trump’s tax returns purely for political purposes.”

*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 Passes Four Financial Services Bills**

#### *Key Point:*

- *The House passed bipartisan bills to curb insider trading, counter drug and sex trafficking, and investigate abuses of financial technology.*

This week, the House passed four bipartisan financial services bills:

- The Financial Technology Protection Act ([H.R. 56](#)), introduced by Representative Ted Budd (R-NC), which would provide for the investigation of new financial technologies and their use in terrorism and other illicit activities. The bill would establish the Independent Financial Technology Task Force to Combat Terrorism and Illicit Financing, which would be required to research terrorist and illicit use of new financial technologies and issue an annual report. The bill passed the House by voice vote.
- The Homeland Security Assessment of Terrorists’ Use of Virtual Currencies Act ([H.R. 428](#)), introduced by Representative Kathleen Rice (D-NY), which would direct the Department of Homeland Security’s Office of Intelligence and Analysis to assess the threat posed by individuals using virtual

currencies to support terrorism. The bill passed the House by a vote of 422-3.

- The Fight Illicit Networks and Detect (FIND) Trafficking Act ([H.R. 502](#)), introduced by Representative Juan Vargas (D-CA), which would direct the Government Accountability Office (GAO) to study and report on the use of virtual currencies and online marketplaces in sex and drug trafficking. The bill passed the House by a vote of 412-3.
- The Promoting Transparent Standards for Corporate Insiders Act ([H.R. 624](#)), introduced by House Financial Services Committee Chairwoman Maxine Waters (D-CA), which would direct the Securities and Exchange Commission (SEC) to study and report on possible revisions to regulations regarding Rule 10b5-1 trading plans. The bill passed the House by a vote of 413-3.

### **SEC Names Manisha Kimmel as Senior Policy Advisor on the Consolidated Audit Trail**

#### *Key Point:*

- *Kimmel will coordinate the SEC’s oversight of the SRO’s creation and implementation of the CAT.*

On January 29, the Securities and Exchange Commission issued a [press release](#) announcing that Manisha Kimmel had been hired to serve as Senior Policy Advisor for Regulatory Reporting to Chairman Jay Clayton. The press release explained that:

In this new role, Ms. Kimmel will coordinate the SEC’s oversight of the self-regulatory organizations’ (SROs) creation and implementation of the Consolidated Audit Trail (CAT). Ms. Kimmel will work

closely with the Division of Trading and Markets and other divisions and offices on the CAT and other regulatory reporting matters.

Prior to joining the SEC Kimmel served as the Head of Regulatory and Compliance, Wealth Management at Refinitiv. She also served on the Advisory Committee for CAT NMS LLC and as a member of the SEC's Equity Market Structure Advisory Committee (EMSAC).

Several news outlets reported on January 31 that the exchanges overseeing the CAT contract will switch from Thesys to a new vendor.

### Senate Banking Committee Chairman Crapo Outlines Agenda for the 116<sup>th</sup> Congress

#### Key Point:

- *Crapo stated that his agenda includes housing finance reform, data security, financial innovation, and reauthorization of the NFIP, Ex-Im Bank, and TRLA.*

On January 29, Senate Banking Committee Chairman Mike Crapo (R-ID) issued a [press release](#) outlining the Committee's agenda for the 116<sup>th</sup> Congress. The issues noted in the press release included:

- GSE and housing finance reform;
- JOBS/capital formation/corporate governance/regulatory reform legislation;
- data collection, privacy and data security;
- examining the regulatory landscape to ensure that it “welcomes that innovation” for FinTech and digital payments and currencies;
- reauthorization of the National Flood Insurance Program (NFIP), Export Import Bank (Ex-Im), Terrorism Risk

Insurance Act (TRIA), and Fixing America's Surface Transportation (FAST) Act;

- oversight of federal regulatory agencies and their implementation of laws, as well as reviewing “the benefits of agencies that have a bipartisan commission, rather than a single director; a Congressional funding mechanism; and a safety and soundness focus”; and
- examining access to credit, including conducting “oversight when financial companies use their market power to manage social policy by withholding access to credit or services to customers and industries they disfavor.”

### House Financial Services Committee Holds Organizational Meeting

#### Key Point:

- *The Committee approved its rules for the 116<sup>th</sup> Congress, as well as subcommittee assignments.*

On January 30, the House Financial Services Committee held its [organizational meeting](#) for the 116<sup>th</sup> Congress. A motion to approve a [resolution](#) establishing the Committee rules for the 116<sup>th</sup> Congress was adopted by voice vote. The Committee also approved its Subcommittee assignment for [Majority](#) and [Minority](#) members.

Chairwoman Maxine Waters (D-CA) stated that the Committee will have a new agenda under a Democratic majority. She said they will be focused on protecting consumers from harmful financial products, ensuring financial stability, addressing affordable housing, tackling the homelessness crisis, encouraging financial innovation, promoting diversity and inclusion in the financial sector, and ensuring that all Americans have fair access to the financial system. She stressed that they will engage in

diligent oversight of the matters under their jurisdiction. She stated that changes to the Committee's rules include the creation of a Subcommittee on Diversity and Inclusion.

Ranking Member Patrick McHenry (R-NC) said there are great opportunities for the Committee to operate in a bipartisan way. He stated that he hopes the Committee will focus on building consensus, noting that he and Chairwoman Waters have previously worked together to pass legislation. He congratulated Waters on being appointed chair of the committee, noting that she was the first woman and the first African American to chair the committee.

### Regulators Issue Final Rule on Private Flood Insurance

#### Key Point:

- *The rule directs regulated lenders to accept policies meeting the statutory definition of private flood insurance.*

Last week, the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) issued a joint [final rule](#) on "Loans in Areas Having Special Flood Hazards." The rule implements provisions passed in the Biggert-Waters Flood Insurance Reform Act of 2012. The rule requires regulated lending institutions to accept policies that meet the statutory definition of "private flood insurance" in the Biggert-Waters Act.

The final rule is still being reviewed by the Federal Reserve, the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA). The final rule would go into effect as of July 1, 2019, if approved by those agencies.

### Senate Banking Chairman Crapo Releases Housing Finance Reform Outline

#### Key Point:

- *Chairman Crapo released a proposal to privatize Fannie Mae and Freddie Mac, restructure the FHFA, and allow Ginnie Mae to provide a government guarantee at the security-level.*

On February 1, Senate Banking Committee Chairman Mike Crapo (R-ID) released an [outline](#) for housing finance reform legislation. In a [press release](#), Crapo stated that his priorities for housing finance reform are "to establish stronger levels of taxpayer protection, preserve the 30-year fixed rate mortgage, increase competition among mortgage guarantors, and promote access to affordable housing."

The notable provisions of the Crapo proposal include:

- Converting Fannie Mae and Freddie Mac into private guarantors whose primary business would be to "guarantee the timely repayment of principal and interest to investors of eligible mortgages that are securitized through a securitization platform operated by Ginnie Mae."
- Allow other private companies (except insured depository institutions) to be guarantors.
- Limiting the percentage of outstanding guaranteed eligible mortgages any one guarantor can guarantee.
- Requiring guarantors to maintain a minimum statutorily required capital ratio.
- Restructuring the Federal Housing Finance Agency (FHFA) from a single directorship to a board of directors. FHFA would charter, regulate, and supervise guarantors.

- Maintaining FHFA’s existing authorities to resolve an insolvent guarantor. The proposal emphasizes that “Guarantors will be allowed to fail.”
- Requiring FHFA to approve guarantors’ pricing.
- Allowing Ginnie Mae to “provide a catastrophic government guarantee at the security-level to cover tail-end risk, backed by the full-faith and credit of the United States.”
- Requiring Ginnie Mae to operate a mortgage insurance fund (MIF) funded through insurance premiums paid by guarantors.

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

## **HEALTH**

### **HHS Announce Proposed Rule on Drug Rebates**

#### *Key Points:*

- *The Department of Health and Human Services Office of Inspector General released a proposed rule amending the safe harbor regulations to explicitly exclude rebates paid by the manufacturer to plan sponsors in Medicare Part D, Medicaid managed care organizations, or pharmacy benefit managers (PBM) from the definition of discount eligible for safe harbor protection.*
- *Two new safe harbors are proposed protecting certain point-of-sale reductions and certain PBM service fees.*

On January 31, the Department of Health and Human Services (HHS) announced a new proposed rule aimed at lowering prescription drug prices by allowing rebates to be passed on

directly to patients. HHS Secretary Alex Azar asserted “this proposal has the potential to be the most significant change in how Americans’ drugs are priced at the pharmacy counter, ever, and finally ease the burden of the sticker shock that millions of Americans experience every month for they need.”

HHS cites three problems with the current rebate system. First, rebates reward increasing list prices since they are negotiated as a percentage of list price. Higher list prices drive up costs for patients and total spending by plans and payers. Second, rebates are not reflected in patients’ out-of-pocket costs and are not used to reduce patient cost-sharing. Third, the current system discourages the use of effective, lower-priced generics and biosimilars. HHS notes these rules have not been updated since Medicare Part D was established.

The proposed rule updates the current discount safe harbor to exclude from the definition of a discount reductions in price offered by manufacturers to Medicare Part D, Medicaid managed care plans, and pharmacy benefit managers (PBM) under contract with them. It creates a new safe harbor for price reductions that are reflected in the price charged to the patient.

Read the proposed rule [here](#) and a factsheet on the proposal [here](#).

### **Congress Holds Hearings on Prescription Drug Prices**

#### *Key Points:*

- *The Senate Finance Committee and the House Oversight and Reform Committee held hearings on the cost of prescription drugs.*
- *Both hearings included discussions on government-funded research and patents, pharmacy benefit managers, direct-to-consumer*

*advertising, international drug prices, and Medicare.*

On January 29, both the Senate Finance Committee and the House Oversight and Reform Committee held hearings on the cost of prescription drugs. Both committees heard testimony from industry experts and patient advocates, specifically parents of children battling diabetes. According to Senate Finance Committee Ranking Member Ron Wyden (D-OR), Tuesday's hearing was the first in a series dedicated to prescription drug prices in America.

Comments from Members and witnesses in both hearings were targeted to all elements of the pharmaceutical market including research and development, patents, pharmacy benefit managers, and anticompetitive behavior. During the Senate Finance hearing, anticompetitive behavior by manufacturers was highlighted by Senator Bob Menendez (D-NJ) and Senator Maggie Hassan (D-NH). More specifically, Menendez expressed concern that generic drug companies try not to compete against each other in the same geographic region. Hassan pointed to how manufacturers calculate rebates for authorized generic drugs or generic versions of the brand drug that the brand manufacturer itself produces. Senators also asked the witnesses to give their top recommendations on how to reduce drug prices. International reference pricing and value-based pricing were repeatedly referenced as potential solutions.

In addition to the questions on patents and pharmacy benefit managers, Members on the House Oversight and Reform Committee questioned the witnesses on the impact of Medicare negotiation. Witness Gerald Anderson from Johns Hopkins University emphasized it would be a challenge to negotiate prices for every drug. Witness Aaron

Kesselheim from Harvard Medical School added that in order to drive competition, Medicare could use a negotiating model to leverage its buying power and prioritize the value of drugs. The Affordable Care Act and generic drug competition were also discussed throughout the hearing.

## Upcoming Hearings and Meetings

### February 5

**Primary Care:** The Senate Health, Education, Labor and Pensions Committee will hold a hearing on "How Primary Care Affects Health Care Costs and Outcomes."

**Preexisting Conditions:** The House Education and Labor Committee will hold a hearing on "Examining Threats to Workers with Preexisting Conditions."

### February 6

**ACA:** The House Energy and Commerce Committee will hold a hearing on "Texas v. U.S.: The Republican Lawsuit and Its Impacts on Americans with Pre-Existing Conditions."

## TRADE

### **USMCA Timing and Ratification Remains Uncertain**

#### *Key Points:*

- U.S. Trade Representative (USTR) Robert Lighthizer sent Congress [a list of legislative changes](#) that are necessary to implement the U.S.-Mexico-Canada Agreement (USMCA).
- The International Trade Commission (ITC) announced its report on the USMCA was delayed 35 days due to the government shutdown; the report must now be submitted by April 19.

- House Ways and Means Ranking Member Kevin Brady (R-TX) said Congress will not consider the USMCA until Section 232 tariffs on steel and aluminum for Canada and Mexico are lifted.

Senate Finance Chairman Chuck Grassley (R-IA) released USTR's list of required legislative changes Tuesday, stating, "[t]ransparency and adequate consultation every step of the way in accordance with Trade Promotion Authority will strengthen this agreement for the benefit of American farmers, businesses, workers and families." The list outlines the numerous changes that have to be made to implement USMCA's new rules of origin. It also includes changes to implement new provisions on the merchandise processing fee, government procurement, dispute settlement, energy regulatory measures, and more. The document also states that "the Administration, in consultation with the Committee on Ways and Means of the House and the Committee on Finance of the Senate, may consider other provisions that may be strictly necessary or appropriate to provide for the fullest implementation and enforcement of the USMCA."

Meanwhile, the ITC confirmed that its crucial report on the USMCA was delayed 35 days because of the government shutdown. The report lays out "the likely impact of the agreement on the economy as a whole and on specific economic sectors." Congress is not legally obligated under Trade Promotion Authority (TPA) to wait for the report to begin deliberation of the USMCA, though traditionally Congress has waited for its release. The report must be made public by April 19.

House Ways and Means Committee Ranking Member Kevin Brady (R-TX) said Tuesday that lawmakers are "not really willing to consider

this agreement until the steel and aluminum tariffs are assured of being lifted off [of Canada and Mexico] -- including quotas." It remains to be seen whether the Trump Administration is open to removing or significantly altering the quotas proposed as 232 tariff replacements in USMCA side letters.

### **President Trump Optimistic about Trade Deal with China**

#### *Key Point:*

- President Trump hosted a Chinese delegation on Thursday and announced he will be meeting with President Xi Jinping next month.

President Trump said Thursday that the U.S. and China have made "tremendous progress" on contentious issues, though "that doesn't mean we're going to have a deal." He also tweeted that a deal will not be finalized until he and President Xi meet "in the near future to discuss and agree on some of the long standing and more difficult points." With regard to the scheduled tariff hike (from 10 percent to 25 percent on \$200 billion of Chinese goods), President Trump said that "I think we can do it by March 1. Can we get it down on paper by March 1? I don't know." Some U.S. officials believe the U.S. and China may agree to a smaller deal to stave off new tariffs and tariff increases, with a more significant deal potentially coming later. However, President Trump said Thursday that he wants a "real deal." Negotiators have reportedly made progress on market access and intellectual property (IP), with forced technology transfers, digital trade, and subsidies remaining unresolved. The Chinese delegation called the meeting "candid, specific and fruitful."

Treasury Secretary Steven Mnuchin and USTR Lighthizer will lead a delegation to China this month to begin the next round of negotiations.

President Trump is expected to meet with President Xi after his summit with Kim Jong Un at the end of February.

*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 Alex Barcham.*