

February 22, 2019

## Washington Update

### This Week In Congress

**House** – The House was in recess this week.

**Senate** – The Senate was in recess this week.

### 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

### **Democrats Look for Answers on Tax Form Study**

#### *Key Points:*

- *House Ways and Means Democrats sent a letter to IRS Commissioner Rettig asking for information related to the third-party study on the new Form 1040.*
- *The IRS sanctioned a third-party study on the usability of the new individual income tax form and has not been made public.*

Last week, Democrats on the House Ways and Means Committee sent a [letter](#) to Internal Revenue Services (IRS) Commissioner Charles Rettig asking for any information on “reports, studies, surveys, feedback or focus groups” commissioned by the IRS Wage and Investment Division regarding the new Form 1040. The inquiry is in regard to an IRS-sanctioned study conducted by a third party on the usability of the new individual income tax form and specifically mentioned the MITRE Corporation. The letter also asks why the information was not publicly available.

According to the Committee website, the pieces of information that members requested are:

- Verbatim copies of notes taken by outside observers who watched taxpayers work through the new forms;
- The written description of all findings or results given to the IRS by a third party with respect to the usability of the forms;
- A description of what was done with the findings or results upon receipt; and
- An explanation for why any and all third-party results were not shared with the public.

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In large part, this action is reflective of the skeptical approach House Democrats have on the TCJA, and is likely the beginning of inquiries and hearings on various aspects of the tax reform law and its implementation.

### Senator Collins Introduces Retirement Security Act

#### Key Points:

- *Senators Susan Collins (R-ME) and Maggie Hassan (D-NH) introduced the Retirement Security Act of 2019 that would address small business pension reforms.*
- *The bill would allow businesses to share the administrative burden of a retirement plan, protect members of a MEP should a member fail to meet benefit requirements, reduce the cost of maintaining a retirement plan, and encourage the public to save more for retirement.*

Earlier this month, Senator Susan Collins (R-ME) introduced [S. 321](#), the Retirement Security Act of 2019. The bill would address retirement savings by allowing businesses to share the administrative costs of a retirement plan without requiring a connection among them. The bill would also ensure that members of a Multiple Employer Plan (MEP) would not lose their tax benefits should one employer in the MEP fail to meet the minimum criteria necessary for retirement plans to obtain benefits.

Senator Collins stated that the bill “would significantly improve the financial security of many Americans by reducing the cost and complexity of retirement plans, especially for small businesses, and encourage individuals to save more for retirement.” Senator Maggie Hassan (D-NH), the co-sponsor of the bill, added that “[B]y giving more small businesses the support that they need to provide

retirement plans to their employees and encouraging people in the workforce to save more for retirement, this bipartisan bill is an important step toward providing a secure retirement for more of our workers.”

This bill is another indication that retirement tax policy is one of the more likely areas for action in 2019. Another more comprehensive bill by Senate Finance members Senators Portman (R-OH) and Cardin (D-MD) is also expected to be introduced in the coming weeks or perhaps couple months.

### Upcoming Hearings and Events

#### February 27

***TCJA and its Effect on the Budget and Families:*** The House Budget Committee is planning a hearing to take place on February 27 that will address the 2017 Tax Cuts and Jobs Act (TCJA) and its effect on the budget and families, according to multiple aides. Scheduled witnesses include Caroline Bruckner, managing director of American University’s Kogod Tax Policy Center; William Gale, co-director of the Urban-Brookings Tax Policy Center; and Chye-Ching Huang, director of federal fiscal policy at the Center on Budget and Policy Priorities. An additional witness will be announced later.

*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

#### **SEC Issues Proposed Rule to Expand “Test-the-Waters”**

##### Key Point:

- *The proposed rule would allow all issuers to take advantage of the “test-the-waters” provision, which is currently only available to EGCs.*

On February 19, the Securities and Exchange Commission (SEC) issued a [proposed rule](#) to expand the applicability of the “test-the-waters” provision to all issuers. The SEC [press release](#) explained that this would allow issuers to “gauge market interest in a possible initial public offering or other proposed registered securities offering by permitting discussions with certain investors prior to the filing of a registration statement.” The Jumpstart Our Business Startups (JOBS) Act created the test-the-waters provision, but limited its applicability to emerging growth companies (EGCs), which are companies with gross revenues of less than \$1.07 billion in the last fiscal year.

In the press release, SEC Chairman Jay Clayton stated:

Extending the test-the-waters reform to a broader range of issuers is designed to enhance their ability to conduct successful public securities offerings and lower their cost of capital, and ultimately to provide investors with more opportunities to invest in public companies. I have seen first-hand how the modernization reforms of the JOBS Act have helped companies and investors. The proposed rules would allow companies to more effectively consult with investors and better identify information that is important to them in advance of a public offering.

The proposed rule will be subject to a 60-day comment period.

## SEC Transaction Fee Pilot Program

### Key Points:

- *In December, the SEC issued a final rule to implement a pilot program testing the impact of*

*exchange transaction fee and rebate pricing models on order routing behavior, execution quality, and market quality.*

- *Nasdaq, Cboe, and the New York Stock Exchange have filed suits challenging the pilot program.*

On February 20, the Securities and Exchange Commission (SEC) [final rule](#) to implement the transaction fee pilot program was published in the *Federal Register*. The effective date is April 22, 2019, through December 29, 2023. The intent of the pilot is to study the effects that exchange transaction fee-and-rebate pricing models may have on order routing behavior, execution quality, and market quality. The rule provides for a two year pilot program, but allows the SEC flexibility to cut the pilot short or extend its duration.

On February 14, the New York Stock Exchange (NYSE) filed a suit in federal appeals court challenging the pilot program. On February 15, Nasdaq and Cboe jointly filed a similar suit. Both suits allege that the pilot would undermine a key part of the exchanges’ business model by limiting their ability to pay rebates under the “maker-taker” model.

## Upcoming Hearings and Events

### February 26

**Credit Bureaus:** The House Financial Services Committee will hold a hearing entitled “Who’s Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System.”

**Monetary Policy:** The Senate Banking Committee will hold a hearing to receive the Federal Reserve’s Semiannual Monetary Policy Report to Congress. Federal Reserve Board Chairman Jerome Powell will testify at the hearing.

***Community Development Financial Institutions:*** The House Appropriations Committee’s Subcommittee on Financial Institutions and General Government will hold a hearing entitled “Leveraging Private Capital for Underserved Communities and Individuals: A Look into Community Development Financial Institutions.”

### **February 27**

***Monetary Policy:*** The House Financial Services Committee will hold a hearing entitled “Monetary Policy and the State of the Economy.” Federal Reserve Board Chairman Jerome Powell will testify at the hearing.

***Diversity:*** The House Financial Services Committee’s Subcommittee on Diversity and Inclusion will hold a hearing entitled “Diversity Trends in the Financial Services Industry.”

***Housing:*** The House Appropriations Committee’s Subcommittee on Transportation, Housing and Urban Development, and Related Agencies will hold a hearing entitled “Stakeholder Perspectives: Fair Housing.”

### **February 28**

***Capital Formation/Corporate Governance:*** The Senate Banking Committee will hold a hearing to consider legislative proposals on capital formation and corporate governance. The witnesses at the hearing will be Catherine Mott, CEO, BlueTree Capital and BlueTree Allied Angels; Thomas Quaadman, Executive Vice President, U.S. Chamber Center for Capital Markets Competitiveness; and Heather Slavkin Corzo, Head of Capital Markets Policy, AFL-CIO.

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

## **ENERGY & ENVIRONMENT**

### **FERC Outlines Path Forward on LNG Certificates**

#### *Key Points:*

- *On February 21, FERC approved an LNG export facility, establishing a framework for consideration of greenhouse gas emissions that can be applied in future reviews.*
- *The decision drew the support of Commissioner Cheryl LaFleur, a Democrat, who joined Republican Chairman Neil Chatterjee and Commissioner Bernard McNamee in voting to approve the facility.*
- *FERC took other actions during yesterday’s monthly open meeting, including on generator interconnection procedures and hydropower.*

On Thursday, during its monthly open meeting, the Federal Energy Regulatory Commission (FERC) voted 3-1 to approve Natural Gas Act certificates for the Venture Global Calcasieu Pass liquefied natural gas (LNG) export facility and associated pipeline. The Commission, in its [order](#), set forth a process for accounting for direct greenhouse gas (GHG) emissions from the facility. Chairman Neil Chatterjee, Commissioner Bernard McNamee, and Commissioner Cheryl LaFleur voted for the order, which provides a roadmap for approval of other LNG certificates pending before the Commission. In a [statement](#), Chairman Chatterjee remarked, “I anticipate we’ll be able to use the framework developed in this order to evaluate the other LNG certificates that the Commission is considering.” Chatterjee added that the order is a “matter of truly strategic significance, and we as an agency are dedicated to doing our part in this historic American moment by conducting thorough, efficient and legally durable reviews of every LNG terminal application we receive.”

In her [conurrence](#) with the decision, Commissioner LaFleur, who has pressed for FERC to consider GHG emissions in both LNG facility and natural gas pipeline reviews, noted that, under current law, the Department of Energy (DOE) is the agency that would assess upstream and downstream GHG impacts of a proposed export terminal. She added, however, that “[t]he Commission still has the clear responsibility to disclose and consider the direct and cumulative impacts of the proposed LNG export facility, in order to satisfy our obligations under” the National Environmental Policy Act (NEPA) and the Natural Gas Act. She also noted that, “[a]s with recent pipeline orders, I am attempting to assess LNG projects as I believe the law requires, despite the complications of the Commission’s shared authority with the DOE and my concerns regarding how the Commission limits its disclosure and discussion of GHG emissions.”

In his [dissent](#), Commissioner Rich Glick argued that the “Commission is again deliberately ignoring the consequences that its actions have for climate change.” He also declared that, as long as FERC fails to properly account for GHG emissions in its public interest determinations for projects, “I have no choice but to dissent from its orders, regardless of what I might otherwise think about the benefits of a project.”

In a [press release](#), the Department of Energy praised FERC’s action, asserting that it would “provide a path forward for consideration of liquefied natural gas (LNG) export terminals pending before the Commission.”

FERC, as described in a [press release](#), also approved a rule to conform “the Commission’s regulations to the America’s Water Infrastructure Act of 2018, which amended sections of the [Federal Power Act] related to

preliminary permits, qualifying conduit hydropower facilities, and start for payment of annual charges.”

Also on Thursday, FERC approved “Reform of Generator Interconnection Procedures and Agreements” ([Order 845-A](#)).

FERC posted a complete list of the matters addressed in Thursday’s meeting in its “[Notice of Actions Taken](#)”.

The Commission will convene its next open meeting on March 21.

### Senate to Vote on “Green New Deal” Resolution

#### Key Points:

- *The Senate is moving toward a vote on the “Green New Deal”, the resolution that would declare congressional intent to enact an extensive and far-reaching program of greenhouse gas emissions reductions and social welfare programs.*
- *The vote could occur as soon as next week.*

Within the next two weeks, the Senate is expected to vote on resolution “Recognizing the duty of the Federal Government to create a Green New Deal” ([S.Res. 59](#)). Senator Ed Markey (D-MA) introduced the resolution on February 7, and it is the companion to the House resolution introduced by Representative Alexandria Ocasio-Cortez (D-NY). The Senate resolution has the support of 11 cosponsors.

The resolution cites the dangers and economic costs of climate change, and describes the other social challenges that Congress should address as part of Green New Deal legislation. The resolution calls for “a new national, social, industrial and economic mobilization” to address these issues. It also declares that “it is

the duty of the Federal Government to create a Green New Deal” to:

- “achieve net-zero greenhouse gas emissions through a fair and just transition for all communities and workers;”
- “create millions of good, high-wage jobs and ensure prosperity and economic security for all people of the United States;” and
- “invest in the infrastructure and industry of the United States to sustainably meet the challenges of the 21st century”.

It further calls for the Green New Deal to ensure the provision of: “clean air and water; . . . climate and community resiliency; . . . healthy food; . . . access to nature; and . . . a sustainable environment . . .”

To reduce greenhouse gas emissions, the resolution calls for the Green New Deal’s “10-year national mobilization” to include:

- “meeting 100 percent of the power demand in the United States through clean, renewable, and zero-emission energy sources;
- “building or upgrading to energy-efficient, distributed, and ‘smart’ power grids, and ensuring affordable access to electricity . . .”;
- “upgrading all existing buildings in the United States and building new buildings to achieve maximum energy efficiency, water efficiency, safety, affordability, comfort, and durability, including through electrification;”
- removing “pollution and greenhouse gas emissions from the agriculture sector as much as technologically feasible . . .”; and
- “overhauling transportation systems in the United States to remove pollution and greenhouse gas emissions from the

transportation system as much as technologically feasible . . .”

Senate Majority Leader Mitch McConnell (R-KY) announced earlier this month that he would schedule a floor vote to “give everybody a chance to go on record and see how they feel about the Green New Deal.”

## Upcoming Hearings and Events

### February 26

***Surface Transportation and Pipeline Cybersecurity:*** The House Homeland Security Committee’s Subcommittee on Cybersecurity, Infrastructure Protection, and Innovation and Subcommittee on Transportation and Maritime Security will hold a [hearing](#) on “Securing U.S. Surface Transportation from Cyber Attacks.”

***State of the U.S. Territories:*** The Senate Energy and Natural Resources Committee will hold a [hearing](#) on the “State of the U.S. Territories”.

***Climate Change Research:*** The House Appropriations Committee’s Subcommittee on Commerce, Justice, Science, and Related Agencies will hold a [hearing](#) on “Understanding the Changing Climate System and the Role of Climate Research”.

***EPA Environmental Laws Enforcement:*** The House Energy and Commerce Committee’s Subcommittee on Oversight and Investigations will hold a [hearing](#) on “EPA’s Enforcement Program: Taking the Environmental Cop Off the Beat”.

***Water Supply Reliability:*** The House Natural Resources Committee’s Subcommittee on Water, Oceans, and Wildlife will hold a [hearing](#) on “The State of Water Supply Reliability in the 21st Century”.

**Science and Policy:** The House Natural Resources Committee’s Subcommittee on Oversight and Investigations will hold a [hearing](#) titled, “The Denial Playbook: How Industries Manipulate Science and Policy from Climate Change to Public Health”.

**Advanced Research Projects Agency-Energy:** The House Science, Space, and Technology Committee’s Subcommittee on Energy will hold a [hearing](#) on “The Future of ARPA-E (Advanced Research Projects Agency-Energy)”.

#### February 27

**Chemical Facility Security:** The House Homeland Security Committee will hold a [hearing](#) on “Securing Our Nation’s Chemical Facilities: Building on the Progress of the CFATS (Chemical Facility Anti-Terrorism Standards) Program.”

**Climate Change Impacts on Oceans/Coasts:** The House Science, Space, and Technology Committee’s Subcommittee on Environment will hold a [hearing](#) on “Sea Change: Impacts of Climate Change on Our Oceans and Coasts.”

#### February 28

**World Energy Outlook:** The Senate Energy and Natural Resources Committee will hold a [hearing](#) on “The International Energy Agency’s (IEA) World Energy Outlook”.

#### March 28

**Energy Sector Cybersecurity:** The Federal Energy Regulatory Commission (FERC) and the Department of Energy will hold a [technical conference](#) on “Security Investments for Energy Infrastructure”. The conference will “discuss current cyber and physical security practices used to protect energy infrastructure and will explore how federal and state authorities can provide incentives and cost

recovery for security investments in energy infrastructure, particularly the electric and natural gas sectors.”

#### June 25-26

**Natural Gas Pipeline Safety Regulations:** The Pipeline and Hazardous Materials Safety Administration (PHMSA) will convene a meeting of its Gas Pipeline Advisory Committee (GPAC). As detailed in the [meeting notice](#), the “GPAC will be considering the gathering line component of the proposed rule titled ‘Safety of Gas Transmission and Gathering Pipelines,’ which was published in the Federal Register on April 8, 2016, (81 FR 20722) and the associated regulatory analysis.”

*For more information about energy and environment issues you may [email](#) or call Frank Vlossak at 202-659-8201. Sam Brooks contributed to this report. Updates on energy and environment issues are also available on [twitter](#).*

## HEALTH

### **CMS Actuary Releases 2018-2027 Projections of National Health Expenditures**

#### *Key Points:*

- *The Centers for Medicare and Medicaid Services’ Office of the Actuary released its latest projections for national health expenditures.*
- *National health expenditure growth is expected to average 5.5 percent annually reaching nearly \$6 trillion by 2027.*

On February 20, the Centers for Medicare and Medicaid Services released the latest national health expenditures projections from the Office of the Actuary for 2018 to 2027. According to the report, expenditures are expected to grow an average of 5.5 percent annually, reaching \$6 trillion by 2027. Growth

in national health spending is projected to be faster than the growth in GDP.

The report identifies several factors driving health care spending including growth in income and employment, demographics such as the Baby Boomers aging into Medicare, and increases in prices for medical goods and services.

Below are some highlights of the report's findings:

- *Medicare* – Medicare spending is projected to average 7.4 percent over 2018 to 2027 sustained by strong enrollment and growth in the use and intensity of covered services.
- *Medicaid* – Medicaid growth is project to average 5.5 percent annually with 2019 expansions in five states resulting in the first acceleration in growth in spending for the program since 2014.
- *Private Health Insurance* – Private health insurance growth is projected to be the slowest among major payors at an average of 4.8 percent for 2018 to 2027. Out-of-pocket expenses are projected to grow and represent 9.8 percent of total spending by 2027.
- *Prescription Drugs* – Prescription drug spending is projected to accelerate due to faster utilization growth. Underlying this utilization growth is efforts to encourage better medication adherence, changing pharmacotherapy guidelines, and an influx of new and expensive innovative drugs.
- *Hospitals* – Hospital spending growth is projected to average 5.6 percent from 2018 to 2027, which includes fasted expected growth in Medicare and Medicaid but slower projected growth in private insurance.

- *Physician Services* – Physician and clinical services are projected to grow an average of 5.4 percent per year from 2018 to 2027.

Read the full report by the Office of the Actuary [here](#).

## Upcoming Hearings and Meetings

### February 26

***Drug Prices:*** The Senate Finance Committee will hold its second hearing on “Drug Pricing in America: A Prescription for Change, Part II.”

### February 27

***Patients:*** CQ Roll Call will hold a discussion on “Empowering Patients as Partners in Health Care.”

***Health Care System:*** The Atlantic will hold a forum on “What is the future of the American health care system?”

***Measles:*** The House Energy and Commerce Committee will hold a hearing on “Confronting a Growing Public Health Threat: Measles Outbreaks in the U.S.”

***Opioids:*** The American Enterprise Institute will hold a discussion on “Navigating the Evolving Opioid Crisis.”

***FDA:*** The House Appropriations Committee will hold a hearing on “Food and Drug Administration - Status of Operations.”

***Health Care Workers:*** The House Education and Labor Committee will hold a hearing on “Caring for Our Caregivers: Protecting Health Care and Social Service Workers from Workplace Violence.”

**February 28**

**Rare Diseases:** The National Institutes of Health will hold its 2019 Rare Disease Day event.

**Biosimilars:** The Alliance for Health Policy will hold a briefing on “Basics of Biosimilars.”

**Opioids:** The Senate Appropriations Committee will hold a hearing on “Opioid Epidemic in America.”

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

**TRADE****USTR Lighthizer to Testify Before Ways & Means***Key Point:*

- U.S. Trade Representative Robert Lighthizer will testify before the House Ways & Means Committee on February 27.

House Ways & Means Chairman Richard Neal (D-MA) announced Wednesday that USTR Lighthizer will testify before the committee in late February. The hearing will focus on U.S.-China trade, though members are likely to ask questions about the U.S.-Mexico-Canada Agreement (USMCA) and the Administration’s suggestion that Section 301 could be used to enforce the deal’s provisions. Lighthizer is also expected to testify before the Senate Finance Committee, possibly next week, as well.

**China Trade Negotiations Continue***Key Points:*

- Chinese officials traveled to Washington DC this week to continue trade negotiations with the scheduled March 1 tariff rate hike approaching.
- President Trump has suggested numerous times that the deadline could be pushed back if negotiators appear close to a deal.

The U.S. and China are reportedly beginning to outline their commitments in principle on the most contentious trade issues. Talks began earlier this week, and the two sides have still not agreed on structural changes to China’s economy, though they are currently constructing six memorandums of understanding: (1) agriculture; (2) forced technology transfer/theft; (3) intellectual property; (4) currency; (5) services; and (6) non-tariff barriers to trade. Chinese government sources have said negotiators have “basically reached a consensus” on reducing trade imbalances, though they have yet to agree on “core demands.” The U.S. is reportedly calling for regular reviews of China’s trade reform progress; if China is not making enough progress, the U.S. would be able to reinstate tariffs.

President Trump suggested again this week that the Administration would be willing to push back the March 1 tariff rate hike. It appears increasingly likely that the deadline will be moved back. Meanwhile, Senate Finance Committee Chairman Chuck Grassley (R-IA) said he believes negotiators will “come up short” of meaningful structural reforms to China’s economy if the deal is done “in a week or two.”

## Commerce Submits Section 232 Automobile Report

### *Key Point:*

- Commerce announced Sunday that it had submitted its 232 report on the national security implications of automobile and auto part imports; President Trump has 90 days to decide which action, if any, to take.

The Commerce Department submitted its 232 report to President Trump last weekend, giving him 90 days to implement a recommendation, take his own action, or take no action. Senate Finance Committee Chairman Chuck Grassley (R-IA) said Tuesday he had not yet seen the report and argued an affirmative ruling of a national security threat posed by auto imports would be “ludicrous.” Senate Finance Committee Ranking Member Ron Wyden (D-OR) stated President Trump “needs to make public his administration’s report on whether it believes imports of autos and auto parts are a threat to our national security, and whether it’s considering tariffs or import restrictions.”

## USTR Considering Suspending Trade Benefits for India

### *Key Point:*

- The Office of the U.S. Trade Representative (USTR) could suspend Generalized System of Preferences (GSP) for India this month.

USTR Robert Lighthizer reportedly sent a letter to India in November calling for the country to address market access issues, particularly e-commerce and data localization policies. India’s GSP was renewed for three years last year; one month later USTR announced a GSP review: “India has

implemented a wide array of trade barriers that create serious negative effects on U.S. commerce. The acceptance of these petitions and the GSP self-initiated review will result in one overall review of India's compliance with the GSP market access criterion.” This review was encouraged by the medical device and dairy industries. The U.S. and India have been in trade talks since the review was announced. GSP is a unilateral U.S. trade program where less developed countries can import certain products into the U.S. at reduced or no duties, and is used as an economic development tool. USTR must notify Congress 60 days prior to making changes to GSP benefits or status.

## Upcoming Hearings and Meetings

### February 27

#### ***House Ways & Means - U.S.-China Trade:***

House Ways and Means Committee (Chairman Richard E. Neal, D-Mass.) will hold a hearing on "U.S.-China Trade" with USTR Robert Lighthizer

#### ***Senate Small Business - Chinese Products/Future of American Industry:***

Senate Small Business and Entrepreneurship Committee (Chairman Marco Rubio, R-Fla.) will hold a hearing on "Made in China 2025 and the Future of American Industry."

*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 Leah Kim.*