

March 1, 2019

Washington Update

This Week In Congress

House – The House passed H.J. Res. 46, which would terminate the President’s national emergency declaration related to the U.S.-Mexico border. The House also passed H.R.1112, “**The Enhanced Background Checks Act;**” H.R. 8, “**The Bipartisan Background Checks Act;**” and S. 47, “**The Natural Resources Management Act.**”

Senate – The Senate confirmed the following nominations: Eric Miller to be United States Circuit Judge for the Ninth Circuit; Michael Desmond, to be Chief Counsel for the Internal Revenue Service; and Andrew Wheeler, of Virginia, to be Administrator of the Environmental Protection Agency.

Next Week In Congress

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

Senate – The Senate is scheduled to vote on the nomination of Allison Jones Rushing to be United States Circuit Judge for the Fourth Circuit.

TAX

IRS Chief Counsel Confirmed by Senate

Key Points:

- *Michael Desmond was confirmed by Senate to be the IRS’s first confirmed chief counsel in two years. The nomination passed the Senate 83-15.*
- *Senator Robert Menendez (D-NJ) opposed the nomination due to his concerns with an IRS rule against state efforts to help taxpayers work around the new SALT cap.*

This week, the Senate confirmed Michael Desmond by a vote of 83-15 as the Internal Revenue Service’s (IRS) first confirmed chief counsel in two years. Desmond was nominated last year by the President, but was held up over an objection from Senator Menendez (D-NJ) due to his concerns that an IRS rule against

state efforts to help their constituents work around the new \$10,000 federal cap on deducting state and local taxes (SALT). Senator Menendez, in his prepared remarks, stated; “[t]hroughout his nomination, I was given no indication that Mr. Desmond would give fair treatment on these important issues affecting the state of New Jersey.”

The previous chief counsel, William Wilkins, stepped down from his position in January 2017. Having a confirmed chief counsel will help the tax agency with litigation, enforcement, rule-making, and other decisions.

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Former IRS chief counsel, Hap Shashy, explained that the “additional weight is in part real or tangible, in the sense that an appointed and confirmed Chief Counsel is invested with the full imprimatur of our Constitutional system of government, and the additional weight also is in part intangible.” Desmond brings to the position his experience at the Justice Department, as well as his service as legislative counsel in Treasury’s Office of Tax Policy.

Tax Extender Legislation and Hearing

Key Points:

- *Senate Finance Committee Chairman Grassley (R-IA) and Ranking Member Wyden (D-OR) proposed legislation to reinstate or extend 29 tax provisions including credits for qualified fuel cell motor vehicles, renewable energy, and Indian coal facilities. The bill also includes exclusion for discharge of mortgage debt and special depreciation rules for racehorses.*
- *House Ways and Means Committee Chairman Neal (D-MA) said he will ensure that any new tax extender legislation will proceed via regular order. He said there will be hearings to discuss the extenders as well as TCJA corrections.*

On Thursday, Senate Finance Committee Chairman Grassley (R-IA) and Ranking Member Wyden (D-OR) proposed the Tax Extender and Disaster Relief Act of 2019. Chairman Grassley, in a floor speech, stated; “[i]n the long term, Congress needs to decide whether these provisions should be allowed to expire, be phased out, or made permanent as current policy or modified in some way.”

Specifically, the bill would reinstate credits for qualified fuel cell motor vehicles, renewable energy, and Indian coal facilities. Additionally, the bill includes exclusion for discharge of

mortgage debt and special depreciation rules for racehorses. Ranking Member Wyden added by saying that “it’s time to kick the addiction to short-term tax policies, but until Congress is able to break this cycle for good, taxpayers deserve certainty about what they’ll owe.”

House Ways and Means Committee Chair Neal (D-MA) has planned a hearing on tax extenders in March but has repeatedly noted that he will not rush the extenders through. He argues that the 2017 Tax Cuts and Jobs Act (TCJA) was rushed through and that he will ensure that any tax extenders will proceed via regular order.

In regard to the House hearing on the extenders, Chairman Neal said the Ways and Means Committee will hold a series of hearings to discuss the corrections to the TCJA as well as tax extenders.

House Budget Committee Holds Hearing on TCJA Impacts

Key Point:

- *Witnesses discussed how the TCJA has impacted small businesses and the middle class.*
- *Democrats argued that the TCJA is another failed example of trickle-down economics while Republicans suggested the 2017 tax law has yielded bigger paychecks and more job opportunities.*

On Wednesday, the House Budget Committee held a hearing entitled “2017 Tax Law: Impact on the Budget and American Families.” Witnesses included academics and think tank representatives, as well as a business owner. Chairman John Yarmuth (D-KY) argued that the TCJA was rushed through Congress and was based on the flawed notion of trickle-down economics. He added that since the bill’s passage, wage growth remains weak and inadequate, and that the bill does little for small businesses and the average worker.

On the other hand, Ranking Member Steve Womack (R-AR) said the TCJA is helping to bring economic opportunities to the middle class and that American workers are seeing bigger paychecks. He noted that consumer confidence is now at an 18-year high and that job creators are seizing the opportunity. He argued that the real issue for the national debt is spending.

March 6

Infrastructure: The House Ways and Means Committee will hold a hearing entitled “Our Nation’s Crumbling Infrastructure and the Need for Immediate Action.” The hearing will take place on Wednesday, March 6 at 10:30 a.m. in room 1100 Longworth House Office Building.

March 7

IRS Filing Season: The House Ways and Means Committee’s Oversight Subcommittee will hold a hearing on the IRS Filing Season on March 7. The hearing will take place at 10:00am in 2020 Rayburn House Office Building.

Multiemployer Pension Crisis: The House Education and Labor, Subcommittee on Health, Employment, Labor and Pensions will hold a hearing on retirement and multiemployer plans entitled “The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis.” The hearing will take place on March 7, at 10:15 a.m., in 2175 Rayburn House Office Building.

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 and Senate Banking Committees Hold Hearings on Federal Reserve Monetary Policy and Bank Supervision

Key Point:

- *The Committees discussed a range of issues including regulatory reform implementation, the Volcker Rule, monetary policy, capital requirements, stress testing, and international insurance negotiations.*

This week, the House Financial Services Committee and the Senate Banking Committee held hearings to discuss the Federal Reserve’s Semi-Annual Monetary Report to Congress. The Committees received testimony from Federal Reserve Board Chairman Jerome Powell.

Senate Banking Chairman Mike Crapo (R-ID) raised concerns with the Federal Reserve’s Quantitative Easing (QE) program and the size of its balance sheet, which is currently about \$4 trillion. He said estimates of the levels of the reserve demand are uncertain, but they are far larger than they were before the financial crisis. He expressed interest in learning about the appropriate size of the Federal Reserve balance sheet and bank reserves. Crapo stated that prior to tax reform people claimed that economic growth would not rise above 2 percent, but the economy has expanded significantly since the Tax Cuts and Jobs Act (TCJA) was passed. He said this economic growth will allow lawmakers greater flexibility to address other challenges. Crapo stated that S. 2155, the banking regulatory reform bill, also supported economic growth and job creation, by right sizing regulation and prioritizing resources for small businesses. He commended the Federal Reserve’s efforts to implement S. 2155. He urged the Federal Reserve to consider: (1)

whether the community bank leverage ratio should be set at 8 percent, rather than the current 9 percent; (2) significantly tailoring regulations for banks between \$50-250 billion in assets, particularly stress testing; and (3) providing significant relief from the Volcker Rule, including the definition of covered funds and the accounting test. Senate Banking Committee Ranking Member Sherrod Brown (D-OH) said the Federal Deposit Insurance Corporation (FDIC) announced this week that banks made record setting profits in 2018 and corporations set records for stock buybacks. He suggested that the TCJA is fueling stock buybacks and CEO bonuses. He stated that banks are continuing to demand weaker rules, raising concern with the proposals put out by the Federal Reserve under S. 2155.

House Financial Services Committee Chairwoman Maxine Waters (D-CA) expressed concern that the Federal Reserve is following the Treasury Department's deregulation roadmap by weakening capital and liquidity buffers for the largest banks. She said many economists believe that bank capital levels are at the lower end of where they should be. She said banks earned record profits in 2018, stating that there is not a need for the Federal Reserve to lower capital and liquidity requirements. She raised concerns with growing income inequality. House Financial Services Committee Ranking Member Patrick McHenry (R-NC) stated that there has been remarkable economic growth over the past two years, which was aided by tax reform and regulatory reform. He said the Federal Reserve's work to right size regulations will help to continue economic growth. McHenry said he shares the Federal Reserve's concerns that global economic uncertainty could affect the U.S., urging the Federal Reserve to continue to monitor the developments in Europe and China.

Members of both parties, including Representatives Nydia Velazquez (D-NY), Brad Sherman (D-CA), Blaine Luetkemeyer (R-MO), Scott Tipton (R-CO), Barry Loudermilk (R-GA), and Ted Budd (R-NC) raised concerns that the implementation of the Current Expected Credit Loss (CECL) methodology could negatively affect the availability of credit. Powell said he does not expect to see such an impact, but the Federal Reserve will monitor the situation.

Representative Bill Huizenga (R-MI) raised concerns with the impact of the Volcker Rule on capital markets. They asked if and when the Federal Reserve will address this issue. Powell said they received extensive comments on their proposal and are looking to address this issue.

Senator Bob Menendez (D-NJ) said there has been a growth in legitimate cannabis-related businesses (CRBs), but most banks and credit unions will not serve them. He said New Jersey is considering legalization. He said forcing CRBs to operate in cash creates a public safety risk. He asked if financial institutions need clarity on this issue. Powell said it would be great to have clarity. He said regulators are in a difficult position, as marijuana is illegal on a federal level, but legal in a growing number of states. He said it would help to have regulatory clarity. Menendez said there are also concerns with the availability of insurance products for CRBs. He asked if Congress should also consider the role of insurance companies. Powell responded in the affirmative.

Senator Tom Cotton (R-AR) said S. 2155 increased the stress test threshold from \$10 billion banks to \$100 billion banks. He asked why banks between \$10-100 billion are still hearing from examiners that they must undergo stress tests. Powell said banks in this range are exempt from the Dodd-Frank Act Stress Tests (DFAST). He said the Federal Reserve is

looking at revising its guidance to address this issue. Cotton asked if the guidance is being interpreted by examiners in a way that the Federal Reserve did not intend. Powell acknowledged that this is possible. He said they will be examining their guidance to ensure banks in this range are not required to do stress tests.

Representatives Sean Duffy (R-WI) and Ted Budd (R-NC) raised concerns with the efforts of the International Association of Insurance Supervisors (IAIS) to developing a new international capital regime. They asked if the U.S. will agree to a new set of insurance capital regulations or if the Federal Reserve will push back and pursue recognition of the U.S. model. Powell said he is not looking to change the fundamental nature of the U.S. insurance regulatory system, which he believes works well. He said he wants to reach an agreement which works with the U.S. system.

Senate Banking Committee Approves Financial Regulator Nominations

Key Point:

- *The Committee approved nominations to the Federal Housing Finance Agency, National Credit Union Administration, Treasury, the Office of Financial Research, and the Export-Import Bank.*

On February 26, the Senate Banking Committee held an [executive session](#) and approved the following nominations:

- Dr. Mark Anthony Calabria, to be Director of the Federal Housing Finance Agency, by a vote of 13-12.
- Mr. Bimal Patel, to be an Assistant Secretary of the Treasury, by voice vote.

- Mr. Todd M. Harper, to be a Member of the National Credit Union Administration Board, by voice vote.
- The Honorable Rodney Hood, to be a Member of the National Credit Union Administration Board, by voice vote.
- Dr. Dino Falaschetti, to be Director, Office of Financial Research, U.S. Department of the Treasury, by voice vote.
- The Honorable Spencer Bachus III, to be a Member of the Board of Directors of the Export-Import Bank, by voice vote.
- Ms. Judith DelZoppo Pryor, to be a Member of the Board of Directors of the Export-Import Bank, by voice vote.
- Ms. Kimberly A. Reed, to be President of the Export-Import Bank, by voice vote.
- Mr. Seth Appleton, to be an Assistant Secretary, U.S. Department of Housing and Urban Development, by voice vote.
- Mr. Robert Hunter Kurtz, to be an Assistant Secretary, U.S. Department of Housing and Urban Development, by voice vote.

The nominees have not yet been scheduled for a confirmation vote by the full Senate.

Senate Banking Committee Holds Hearings on Capital Formation and Corporate Governance Proposals

Key Point:

- *The Committee discussed legislation dealing with money market funds, accredited investors, corporate board diversity, international insurance negotiations, insider trading, proxy advisory firms, and cybersecurity.*

On February 28, the Senate Banking Committee held a [hearing](#) to discuss legislative proposals on capital formation and corporate governance. The Committee discussed legislation dealing with money market funds, accredited investors, corporate board diversity, international insurance negotiations, insider trading, proxy advisory firms, and cybersecurity.

Chairman Mike Crapo (R-ID) asserted that he would attempt to work with Ranking Member Sherrod Brown (D-OH) and other members of the Committee on these proposals. He said the Helping Angels Lead Our Startups (HALOS) Act would allow more startups to access the knowledge and capital of angel investor groups, noting that the bill had 7 bipartisan cosponsors in the 115th Congress. He said the Fair Investment Opportunities for Professional Experts Act would expand the definition of an accredited investor, noting that the bill had 6 bipartisan cosponsors in the 115th Congress. He said the Corporate Governance Fairness Act would address the proxy process. He said the Consumer Financial Choice and Capital Markets Protection Act would provide more financing options for state and local governments seeking to raise money. Crapo said they would also consider provisions from JOBS Act 3.0 bill passed by the House last year. He noted that many of these provisions passed by voice vote, suggesting that they had bipartisan support. He said the Family Office Technical Corrections Act passed the House by voice vote and would provide that family offices can be considered accredited investors. He said Senator Mike Rounds (R-SD) and Senator Jerry Moran (R-KS) had previously introduced a Senate companion to the Options Market Stability Act. Crapo said the bills being considered would require collaboration between Congress and the Securities and Exchange Commission (SEC). He commended the SEC's work with Congress, pointing to the

SEC roundtable on the proxy process. He raised concerns with the rise of environmental, social and governance (ESG) proxy proposals, stressing the need to ensure a focus on fiduciary concerns.

Ranking Member Sherrod Brown (D-OH) said any bills in the Committee should be examined in the context of how they affect workers and investors, rather than just Wall Street. He expressed concerns that the bills would only provide regulatory roll backs and no protections. He questioned what problems these bills were meant to solve, suggesting that the IPO market is improving. Brown said last month 11 former SEC economists wrote to the SEC arguing that their proposed Regulation Best Interest had weak and incomplete economic analysis. He suggested that this was a red flag and the Committee should call the SEC to testify on this issue. Brown said Senator Jack Reed's (D-RI) bill, the Cybersecurity Disclosure Act, would require more disclosure on cybersecurity. He stated that the Promoting Transparent Standards for Corporate Insiders Act ([S. 573](#)), introduced by Senator Chris Van Hollen (D-MD), bill would require the SEC to consider ways to prevent trading abuses by corporate insiders.

Senator Pat Toomey (R-PA) said he intends to reintroduce a bipartisan bill dealing with the regulatory treatment of money market funds (MMF). He said MMFs are a critical source of short-term financing for municipalities, states, and businesses. He said the SEC's 2014 regulation prohibiting institutional, prime, and tax-exempt MMFs from using a stable net asset value (NAV) has been particularly problematic. He said his bill would remedy this situation. He said the Committee heard testimony that tax-exempt MMF assets are down 50 percent due to this regulation, which has raised the cost of financing for municipalities.

Ranking Member Brown and Senator Bob Menendez (D-NJ) raised concerns with the International Insurance Standards Act, suggesting that it would dilute the ability of U.S. insurance negotiators to work international settings to support and defend the U.S. state-based system of insurance regulation.

Senator Thom Tillis (R-NC) said the Corporate Governance Fairness Act was introduced last year. He asked about the issues in this area. Thomas Quadman (U.S. Chamber of Commerce Center for Capital Markets Competitiveness) said the SEC has historically not provided oversight of proxy advisory firms, but recently withdrew their no-action letters to ISS and Glass-Lewis. He said those no-action letters told the proxy firms they did not have to disclose conflicts of interest to their clients. He said the letters also told clients that they can rely on the proxy advisors advice anyway. Tillis asked why this no-action practice was allowed. Quadman argued that this practice did not make sense. He stated that companies like Vanguard and BlackRock have independent analysis units, but smaller companies do not. He said smaller institutional investors engage in “robo-voting,” in which they follow whatever recommendations ISS or Glass-Lewis provide. Tillis asked about Quadman’s concerns with the bill. Quadman said there should be specific language about regulation of conflicts. He stated that there should also be a process to allow transparency into how the recommendations are made. Senator John Kennedy (R-LA) asked if it is appropriate to have only two proxy firms dictating corporate governance in America. Quadman responded in the negative, but said new companies have faced barriers to entry. He suggested that if new companies cannot get into the market, then there should be oversight to ensure a level playing field.

Upcoming Hearings and Meetings

March 6

FSOC: The Financial Stability Oversight Council (FSOC) will hold open and closed sessions. The preliminary agenda for the open session includes proposed amendments to the Council’s interpretive guidance on non-bank financial company designations.

Budget Views and Estimates: The House Financial Services Committee will hold a markup of its Fiscal Year 2020 Budget Views and Estimates.

Financial Services Proposals: The House Appropriations Committee’s Subcommittee on Financial Services and General Government will hold a “Members’ Day Hearing.” The Subcommittee will receive testimony from Members of Congress on their legislative priorities.

March 7

CFPB Oversight: The House Financial Services Committee will hold a hearing entitled “Putting Consumers First? A Semi-Annual Review of the Consumer Financial Protection Bureau (CFPB).”

CFTC Open Meeting: The Commodity Futures Trading Commission (CFTC) will hold an open meeting to consider the following items: (1) Amendment to the Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; (2) Comparability Determination for Australia: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; (3) National Futures Association (NFA) Proposal to Amend Certain NFA Compliance Rules and Interpretive Notices to Incorporate Swaps; (4) Notice of Revised Registration Form 7-R; (5) Final Rule Amending Regulations on

Segregation of Assets Held as Collateral in Uncleared Swap Transactions; and (6) System of Records Notices for CFTC Privacy Act Systems CFTC-12 (NFA Applications Suite), CFTC-45 (Comments Online), and CFTC-53 (Contact Lists).

March 12

Wells Fargo: The House Financial Services Committee will hold a hearing entitled “Holding Megabanks Accountable: An Examination of Wells Fargo's Pattern of Consumer Abuses.”

March 13

Flood Insurance: The House Financial Services Committee will hold a hearing entitled “Preparing for the Storm: Reauthorization of the National Flood Insurance Program.”

Financial Crime: The House Financial Services Committee’s Subcommittee on National Security, International Development and Monetary Policy will hold a hearing entitled “Promoting Corporate Transparency: Examining Legislative Proposals to Detect and Deter Financial Crime.”

March 14

Regulation Best Interest: The House Financial Services Committee’s Subcommittee on Investor Protection, Entrepreneurship and Capital Markets will hold a hearing entitled “Putting Investors First? Examining the SEC’s Best Interest Rule.”

CFPB Advisory Committees: The CFPB will hold a meeting of its Consumer Advisory Board, Community Bank Advisory Council, and Credit Union Advisory Council.

March 26

Disaster Recovery Funds: The House Financial Services Committee’s Subcommittee on Oversight and Investigations will hold a

hearing entitled “The Administration of Disaster Recovery Funds in the Wake of Hurricanes Harvey, Irma, and Maria.”

ESG Disclosure: The House Financial Services Committee’s Subcommittee on Investor Protection, Entrepreneurship and Capital Markets will hold a hearing entitled “Building a Sustainable and Competitive Economy: An Examination of Proposals to Improve Environmental, Social and Governance Disclosures.”

March 27

Technology Advisory Committee: The CFTC will hold a meeting of its Technology Advisory Committee (TAC). The agenda for the meeting includes presentations and actionable recommendations from the TAC subcommittees on Automated and Modern Trading Markets, Distributed Ledger Technology and Market Infrastructure, Virtual Currencies, and Cyber Security, as well as presentations on research findings on automated orders in the futures and options markets from the CFTC’s Division of Market Oversight.

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

ENERGY & ENVIRONMENT**Senate Confirms Wheeler as EPA Administrator***Key Point:*

- *On February 28, the Senate voted to confirm Andrew Wheeler as the 15th Administrator of the Environmental Protection Agency.*

On Thursday, by a [52-47 vote](#), the Senate confirmed the nomination of Andrew Wheeler as Administrator of the Environmental Protection Agency (EPA). Wheeler has served as Acting Administrator since last summer. The Senate voted on April 12, 2018 to confirm him as Deputy Administrator of the agency.

In Senate floor remarks prior to the vote, Majority Leader Mitch McConnell (R-KY) praised Wheeler, saying that he has drawn on “a wealth of experience that includes service as staff director of the Senate Environment and Public Works Committee and a tenure at the EPA that first began back in 1991”, which has allowed him “to advance pragmatic solutions to pressing environmental challenges.”

Senate Environment and Public Works Committee Ranking Member Tom Carper (D-DE) declared his opposition to the nomination: “We can do both. We can have clean air. We can have clean water. We can have strong economic growth. We need somebody running the EPA who actually believes in that too. I am sorry to say here today that right now I don’t believe it is Andrew Wheeler, and I say that with no joy.”

Environment and Public Works Committee Chairman Jim Inhofe (R-OK) praised Wheeler, noting his work in the Senate and at the EPA: “There is no one better to serve in this role, and I would know. Andrew worked for me for 14 years in both my personal office as well as in my capacity as chairman of the...Committee.”

President to Sign Public Lands Legislation*Key Point:*

- *On Tuesday, the Senate approved a package of public lands bills, sending the legislation to the President.*

On February 26, the House of Representatives, by a [363-62 vote](#), approved the “John D. Dingell, Jr. Conservation, Management, and Recreation Act” ([S. 47](#)). The Senate passed the bill on February 12, by a [92-8 vote](#).

As described in a Senate Energy and Natural Resources Committee [press release](#), the legislation “is a bipartisan package of more than 120 public lands, resources, conservation, and water management bills”. The bill, named in honor of the late Chairman of the House Energy and Commerce Committee John Dingell (D-MI), is also intended to:

- “Permanently reauthorize the Land and Water Conservation Fund, with key reforms to strengthen its state-side program;”
- “Increase access and opportunities for hunting, fishing, and other outdoor recreational activities on federal lands;”
- “Provide for economic development in dozens of communities through land exchanges and conveyances; and”
- “Conserve lands of special importance, provided that such protections are supported by the affected state and surrounding communities.”

Upcoming Hearings and Events**March 5*****Electricity Sector in a Changing Climate:***

The Senate Energy and Natural Resources Committee will hold a [hearing](#) on “The Electricity Sector in a Changing Climate.”

Role of States in Protecting Air Quality: The Senate Environment and Public Works Committee’s Subcommittee on Clean Air and Nuclear Safety will hold a [hearing](#) on “States Role in Protecting Air Quality: Principles of Cooperative Federalism.”

March 6

Ocean Energy Management/Safety-Environmental Enforcement/USGS: The House Natural Resources Committee’s Subcommittee on Energy and Mineral Resources will hold a [hearing](#) on “Examining the Policies and Priorities of the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the U.S. Geological Survey.”

PFAS Chemicals Risks: The House Oversight and Reform Committee’s Subcommittee on Environment will hold a [hearing](#) on “Examining PFAS (polyfluoroalkyl substances) Chemicals and their Risks.”

U.S. Leadership in Science/Technology: The House Science, Space, and Technology Committee will hold a [hearing](#) on “Maintaining U.S. Leadership in Science and Technology.”

March 7

Workforce Opportunities/Challenges: The House Appropriations Committee’s Subcommittee on Energy, Water Development, and Related Agencies will hold a [hearing](#) on “Energy Workforce Opportunities and Challenges.”

Energy Department’s Efficiency Standards Inaction: The House Energy and Commerce Committee’s Subcommittee on Energy will hold a [hearing](#) on “Wasted Energy: DOE’s Inaction on Efficiency Standards and Its Impact on Consumers and the Climate.”

Energy Water Nexus: The House Science, Space, and Technology Committee’s

Subcommittee on Energy will hold a [hearing](#) on “The Energy Water Nexus: Drier Watts and Cheaper Drops.”

Clean Water State Revolving Fund: The House Transportation and Infrastructure Committee’s Subcommittee on Water Resources and Environment will hold a hearing on “The Clean Water State Revolving Fund: How Federal Infrastructure Investment Can Help Communities Modernize Water Infrastructure and Address Affordability Challenges.”

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.”

June 27

Grid Reliability: The Federal Energy Regulatory Commission (FERC) will hold a [technical conference](#) “to discuss policy issues

related to the reliability of the Bulk-Power System”.

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

FDA Announces 2019 Regulatory Agenda to Address the Opioid Epidemic

Key Point:

- *The Food and Drug Administration announced its agenda to address the opioid epidemic in 2019 focused on four main areas: reducing misuse and abuse of opioid drugs; support addiction recovery and reduce overdose deaths; research and innovation in non-addictive pain treatments; and strengthen enforcement against illicit opioids.*

On February 26, the Food and Drug Administration (FDA) Commissioner Scott Gottlieb announced the 2019 regulatory agenda for addressing the opioid epidemic. He stressed addressing the opioid crisis is a top priority not only for the FDA but the Department of Health and Human Services and the Administration. He said the agency is committed to “getting ahead of this crisis” noting all options are on the table. The agenda for 2019 outlines four major policy areas in which the FDA plans to act.

Reducing Misuse and Abuse of Opioid Drugs – The FDA plans to take new steps using authorities provided in the SUPPORT Act to require certain packaging be made available for opioids and other drugs that pose a risk of abuse. The FDA is considering mandating that certain solid, oral dosage forms of immediate release formulations be made

available in short-duration packaging to reduce overprescribing. The FDA is also prioritizing use of its new authority to require manufacturers to develop disposal technologies for unused medications. It is also considering a framework that would allow the FDA to evaluate candidate opioids in context of how it fits with what is already available and address the question of whether a new opioid should offer a comparative benefit over existing drugs.

Support Addiction Recovery and Reduce Overdose Deaths – The FDA will prioritize efforts to advance the development and safe use of medication assisted treatment (MAT). This will include new guidance aimed at supporting the development of novel medicines and novel medical devices. The FDA is also examining way to encourage naloxone manufacturers to make the product available over-the-counter.

Research and Innovation in Non-Addictive Pain Treatments – The FDA will issue updated guidance outlining appropriate clinical endpoints and clinical trial approaches for the development of non-opioid drugs to treat chronic and acute pain. The FDA will also work to advance the development of abuse-deterrent formulations of opioids.

Strengthening Enforcement Against Illicit Opioids – The FDA will work with U.S. Customs and Border Protection to expand information sharing and maximize inspection and detection capabilities at the border. The FDA will also expand collaborations with internet stakeholders to crack down on illicit drugs sold online. The FDA will host its Second Online Opioid Summit in April. As part of its efforts to stop illicit sales, the FDA will also work more to secure the legitimate supply chain by holding distributors responsible.

Senate Finance Holds Second Hearing on Drug Pricing

Key Points:

- *The Senate Finance Committee held a hearing titled “Drug Pricing in America: A Prescription for Change, Part II” featuring representatives of the pharmaceutical industry.*
- *Questions focused on the list prices of drugs, spending on research and development, the drug rebate system, and international drug prices.*

On February 26, the Senate Finance Committee held a [hearing](#) entitled “Drug Pricing in America: A Prescription for Change, Part II.” Topics discussed in the hearing included: (1) List Prices; (2) International Pricing; (3) Research and Development; (4) Patent System; (5) Rebate Reform; (6) Government Negotiation; (7) Government-Industry Consensus; (8) Price Justification/Gouging; (9) Generics; (10) Biosimilars; (11) Medicaid Best Price; (12) Opioids; (13) Advertising; (14) Tax Cuts/ Executive Compensation.

Chairman Chuck Grassley (R-IA) emphasized the need to address rising drug costs, particularly list prices. He highlighted a Committee inquiry into the high costs of insulin. Ranking Member Ron Wyden (D-OR) criticized drug manufacturers for escalating prices and said this is causing patients to ration medication or leave necessary drugs at the counter. He expressed skepticism about the claim that pharmacy benefit managers (PBM) are causing prices to rise but added PBMs will “have their day too.”

Committee Democrats focused on ways the government could step in to reduce prices. They made comparisons to international drug prices, contending that countries with more stringent price controls are experiencing better outcomes. Some members criticized drug

manufacturers for abusing the patent system to retain market exclusivity, particularly for drugs that have been on the market for an extended time. There was bipartisan and witness support for the Creating and Restoring Equal Access to Equivalent Samples Act of 2018 ([S. 974](#)) to facilitate easier market access for generic drugs.

Committee Republicans also expressed concern about drug prices but warned against federally negotiated prices. Members highlighted the importance of research and development in identifying new life saving medications. Republican members and witnesses suggested altering the rebate system to curb incentives for manufacturers to set higher list prices.

Upcoming Hearings and Meetings

March 4

Opioids: The National Institutes of Health will hold a multi-disciplinary working group meeting of the Helping to End Addiction Long-term (HEAL) Initiative.

March 5

Patients: Health Affairs will host a briefing on “Patients as Consumers.”

Vaccines: The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “Vaccines Save Lives: What Is Driving Preventable Disease Outbreaks?”

March 6

Innovation: The Hill will hold a discussion on “Overcoming Obstacles: Patient Access to Innovation.”

Drug Pricing: The Senate Special Committee on Aging will hold a hearing on “The Complex

Web of Prescription Drug Prices, Part I: Patients Struggling with Rising Costs”

Costs: The House Energy and Commerce Committee will hold a hearing on “Strengthening Our Health Care System: Legislation to Lower Consumer Costs and Expand Access.”

Nursing Home Care: The Senate Finance Committee will hold a hearing on “Not Forgotten: Protecting Americans From Abuse and Neglect in Nursing Homes.”

March 7

Drug Pricing: The Senate Special Committee on Aging will hold a hearing on “The Complex Web of Prescription Drug Prices, Part II: Untangling the Web and Paths Forward.”

Drug Pricing: The House Ways and Means Committee will hold a hearing on “Promoting Competition to Lower Medicare Drug Prices.”

Health Care Markets: The House Judiciary Committee will hold a hearing on “Diagnosing the Problem: Exploring the Effects of Consolidation and Anticompetitive Conduct in Health Care Markets.”

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

TRADE

USTR Robert Lighthizer Testifies to Ways and Means on China and Other Trade Issues

Key Points:

- *The China deal will be an executive agreement, not submitted to Congress.*

- *President Trump wants any China deal to include structural changes to IP rights and technology transfers.*
- *The U.S.-Mexico-Canada Agreement (USMCA) is a high priority; it serves as a signal on future trade negotiations.*
- *An exclusion process for the third tranche of 301 tariffs, called for in 30 days in the shutdown spending bill, does not appear to be forthcoming.*

U.S. Trade Representative (USTR) Robert Lighthizer testified before the House Ways and Means Committee on February 27, and discussed trade topics related to China and the USMCA. Regarding a trade agreement with China, Representative Doggett (D-TX) asked Lighthizer to outline a time frame for USTR to submit a binding trade agreement for congressional consideration. Lighthizer responded that “[w]e have no intention of submitting it to Congress.” He clarified that that he was negotiating an executive agreement rather than a trade agreement. Doggett argued that any binding trade agreement would require Congressional approval, especially if that agreement would lower U.S. tariffs. USTR Lighthizer declared that the negotiations with China were in pursuit of a “settlement of a 301 action” and that the president was using his authority under Section 301 of the 1974 Trade Act and the Constitution to reach an executive agreement. He stated, “[w]e’re not changing any tariff lines. We’re not using TPA, and if we did by the way, I wouldn’t be here now because we would not have gone through the process. This is the settlement of a 301 action and it is the president’s constitutional authority to enter into executive agreements.”

When asked about the possible terms of a deal with China, USTR Lighthizer answered that President Trump wants to see significant structural reforms in the areas of Intellectual Property (IP) rights and technology transfers.

He explained that the Trump Administration has two primary goals for a new China deal: “[f]irst, this administration is pressing for significant structural changes that would allow for a more level playing field – especially when it comes to issues of intellectual property rights and technology transfers. The issues on the table are too serious to be resolved with promises of additional purchases. We need new rules. Second, any agreement must be enforceable. We at USTR are very aware of the history of our trading relationship with China, and the disappointments that have resulted from promises that were not kept. Thus, the administration is focused on making sure that we have the ability to enforce any new agreement.”

Chairman Neal (D-MA) asked how a deal with China would be enforceable. USTR Lighthizer noted enforcement was absolutely key to any deal with China. He went on to explain that it will be enforced using a process in which office directors will engage in monthly meetings, vice ministers will engage in quarterly meetings, and ministers will engage in meetings semi-annually. He said individual companies would come to the USTR with complaints and these complaints would be raised at meetings. He argued that this would allow the U.S. to identify trends and problematic issues. He said the discussions would rise to the ministerial level if lower levels cannot agree on a solution. He concluded that if the ministers cannot come to a solution, the U.S. would take proportional and unilateral action. He admitted that it is a unique plan that has not been tested before this case.

The USMCA was also brought up as a concern by some Members of Congress. USTR Lighthizer was vague about any details but continued to assert the importance of passing it in Congress. He said, “[t]here is no trade program in the U.S. if we do not pass the

USMCA.” He added that, “[i]f the Congress does not see fit to pass that [USMCA], then everything else is kind of like a footnote. We cannot do trade deals. What it says is that we do not have a consensus and that we do not want to stand up for our workers and our farmers and our ranchers.” He argued that, “[w]e have an agreement [the USMCA] that is clearly better than its predecessor.... [i]t’s \$1.3 trillion worth of business... millions and millions of people are affected and it just has to pass.”

In response to other questions, USTR Lighthizer indicated he would travel to Japan sometime later in March to begin talks on trade issues with that country. He also indicated he would work on discussions to replace 232 tariffs on steel and aluminum with Mexico and Canada, but did not offer a timeline or promise success. Those tariffs and the retaliation by Mexico and Canada have been a sticking point with some in Congress related to the new USMCA agreement.

Finally, in response to a question from Rep. Walorski (R-IN), USTR Lighthizer suggested his agency is not yet implementing an exclusion process for the third tranche of 10 percent tariffs under Section 301. He reiterated that if the tariffs went to 25 percent, a move that was officially postponed this week by the Trump Administration, he would implement an exclusion process. In the legislation that funded the government, reopening parts of it from the shutdown, language called for creating such an exclusion program in 30 days. Given the USTR’s response, yesterday Reps. Walorski and Ron Kind (D-WI) joined with Senators Lankford (R-OK) and Coons (D-DE) to raise the issue further by introducing bipartisan, bicameral legislation. That legislation, the [Import Tax Relief Act](#), calls for such an exclusion process and setting out standards for granting exclusions.

USTR Issues Negotiating Objectives for Potential US-UK Trade Deal

Key Point:

- *Brexit complications linger over future US-UK trade deal.*

On Thursday, the USTR issued the [negotiating objectives](#) for a potential US-UK trade negotiation. The goals are similar to those issued for any US-EU trade deal. This step is required under Trade Promotion Authority thirty days before negotiations can formally begin. The UK is scheduled to exit the EU at the end of March, and then could formally enter into trade deals with the US, though there are many possible complications related to Brexit and the ongoing UK-EU trade relations.

New “USMCA Coalition” Formed to Push for USMCA Passage

Key Point:

- *USMCA Coalition seeks to avoid leaving NAFTA.*

A coalition labeled the “USMCA Coalition” that represents more than 200 companies and industry associations, has formed to support Congressional approval of the USMCA, the revised NAFTA.

The coalition is part of a larger business and stakeholder push, kicked off by the U.S. Chamber of Commerce and others, to push for adoption of the new agreement. In part, the motivation may be to avoid possible withdrawal from NAFTA without any replacement agreement, something President Trump has in the past voiced as an option to force action, but hasn’t recently raised publicly.

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

This Week in Congress was written by Alex Barcham.