

April 26, 2019

## Washington Update

### This Week in Congress

**House** – The House was in recess.

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

### Next Week in Congress

**House** – The House is expected to consider [H.R. 9](#), “**The Climate Action Now Act.**”

**Senate** – The Senate is expected to consider the nominations of William Cooper, to be General Counsel of the Department of Energy; R. Clarke Cooper to be an Assistant Secretary of State; and Gordon Hartogensis to be Director of the Pension Benefit Guaranty Corporation.

## TAX

### Treasury Releases Opportunity Zones Proposed Regulations

#### Key Points:

- *The Treasury Department released a second set of proposed regulations for new Opportunity Zones.*
- *The proposed regulations clarify that “solely for the purposes of section 1400Z-2(d)(3)(A), the ownership and operation (including leasing) of real property is the active conduct of a trade or business.”*
- *A top aide to the Treasury Secretary indicated that the Treasury and Internal Revenue Service may finalize the separate proposed regulations at the same time once comments on all aspects of the incentive are received.*
- *Senators Scott (R-SC) and Booker (D-NJ) plan to introduce legislation that would extend investors’ ability to take advantage of the 15-percent reduction in capital gains tax after an investment has been held for seven years.*

Last week, the Treasury Department released proposed regulations ([REG-120186-18](#)) to address issues within the Opportunity Zone program – a program created by the Tax Cuts and Jobs Act that allows for the deferral, reduction, and in certain cases elimination of capital gains tax by investing in qualified opportunity funds. This was the second set of proposed regulations that the Treasury Department has released on the matter with the first coming in October 2018. The most recent set clarifies that “solely for the purposes of section 1400Z-2(d)(3)(A), the ownership and operation (including leasing) of real property is the active conduct of a trade or business.”

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Daniel Kowalski, counselor to Treasury Secretary Steven Mnuchin, said this week “[i]n order to get information into users’ hands as quickly as possible, we have proposed regulations and solicited comments in tranches.” He added that it may take some time to receive comments on all aspects of the incentive before moving to finalization.

Senators Tim Scott (R-SC) and Cory Booker (D-NJ) will introduce a bill that would extend investors’ ability to take advantage of the 15-percent reduction in capital gains tax after an investment has been held for seven years according to an aide from Senator Scott’s office. The current law states that investors must invest by December 31, 2019 in order to receive the seven-year benefit before the program expires at the end of 2026.

### Update on House Request for the President’s Tax Returns

#### Key Points:

- *Treasury Secretary Mnuchin sent a letter to House Ways and Means Chairman Neal (D-MA) on April 23 saying the Department will take final action on the request for the President’s tax returns by May 6.*
- *House Way and Means Committee Chairman Neal (D-MA) initially set a deadline for April 10.*

On April 23, Treasury Secretary Mnuchin sent a letter to House Ways and Means Committee Chairman Neal (D-MA) saying the Department “expects to take final action on the Committee’s request by May 6.” The letter goes on to discuss the legal and constitutional issues with the request for the President’s tax returns and specifically highlights taxpayer confidentiality. “Taxpayer confidentiality is the linchpin of our tax system of self-assessment and voluntary compliance,” Secretary Mnuchin wrote.

Chairman Neal initially asked the Internal Revenue Service (IRS) to provide six years of President Trump’s business and personal tax returns by April 10. The Department missed the original deadline and informed Chairman Neal that the agency was working with the Department of Justice to determine how to respond to the request. Under section 6103(f)(1) of the Internal Revenue Code (IRC), the chairs and ranking members of both the Senate Finance and House Ways and Means Committee can ask for the president’s tax returns.

### IRS Releases Fact Sheet on Modernization Plan

Earlier this month the IRS released a [fact sheet](#) on the agency’s [Modernization Plan](#). The plan includes a six-year strategy to modernize IRS IT systems and build critical infrastructure needed for the future of the agency. According to the fact sheet, the plan calls for changes that will:

- Consistently provide superior service to taxpayers and the tax community
- Enable a strong and secure systems platform for taxpayer-facing applications
- Expand the digital conversion of paper case files and documentation
- Leverage existing data to detect tax noncompliance earlier
- Deliver long-term budget and personnel efficiencies as the IRS decommissions legacy IT applications, automates manual processes and expands advanced analytics programs
- Stabilize the rising cost of maintaining legacy applications and infrastructure
- Reinvest savings to keep technology current and expand digital services consistent with similar trends in the private sector

The IRS has estimated that the plan will cost approximately \$2.3 billion to \$2.7 billion over six years.

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**

### **Bank Regulators Release Proposed Rules on Resolution Planning, Divestiture Proceedings, and the Supplementary Leverage Ratio**

#### *Key Point:*

- *The Federal Reserve Board issued proposed rules to modify resolution planning requirements for large banks, amend the supplementary leverage ratio, and simplify the rules for determining control of a banking organization.*

On April 18, the Federal Reserve Board and the Federal Deposit Insurance Corporation (FDIC) issued a [proposed rule](#) to modify resolution planning requirements for large banks. As noted in a Federal Reserve [press release](#), the proposal would establish “a graduated set of resolution planning requirements that depend on the level of risk a firm poses for the financial system.” The proposal would apply to domestic and foreign banks with more than \$100 billion in total consolidated assets. The press release notes that “[f]or the most systemically important firms, the proposal would adopt the current practice of requiring resolution plans to be submitted on a two-year cycle.” The comment period closes on June 21, 2019.

Also on April 18, the Federal Reserve Board, the FDIC, and the Office of the Comptroller of the Currency (OCC) issued a [proposed rule](#) to “amend the supplementary leverage ratio of

the regulatory capital rule to exclude certain funds of banking organizations deposited with central banks if the banking organization is predominantly engaged in custody, safekeeping, and asset servicing activities.” The proposed rule will be subject to a 60 day comment period.

On April 23, the Federal Reserve Board issued a [proposed rule](#) to simplify and increase the transparency of the Board’s rules for determining control of a banking organization. As noted in a [press release](#):

In particular, the proposal lays out several factors and thresholds that the Board will use to determine if a company has control over a bank. The key factors include the company’s total voting and non-voting equity investment in the bank; director, officer, and employee overlaps between the company and the bank; and the scope of business relationships between the company and the bank. The proposal clearly describes what combination of those factors would and would not trigger control.

## **Upcoming Hearings and Meetings**

### **April 30**

***Housing:*** The House Financial Services Committee will hold a hearing entitled “Housing in America: Assessing the Infrastructure Needs of America’s Housing Stock.”

***Payday Lending:*** The House Financial Services Committee’s Subcommittee on Consumer Protection and Financial Institutions will hold a hearing entitled “Ending Debt Traps in the Payday and Small Dollar Credit Industry.”

**Bank Supervision:** The Senate Banking Committee will hold a hearing entitled “Guidance, Supervisory Expectations and the Rule of Law: How do the Banking Agencies Regulate and Supervise Institutions?” The witnesses at the hearing will be: Mr. Greg Baer, President And Chief Executive Officer, Bank Policy Institute; Ms. Margaret Tahyar, Partner, Davis Polk & Wardwell LLP; and Ms. Patricia McCoy, Professor of Law, Boston College Law School.

**FEMA Oversight:** The House Appropriations Committee’s Subcommittee on Homeland Security will hold a hearing on the Fiscal Year (FY) 2020 budget for the Federal Emergency Management Agency (FEMA). FEMA Acting Director Peter Gaynor will testify at the hearing.

#### May 1

**Discrimination:** The House Financial Services Committee’s Subcommittee on Oversight and Investigations will convene a hearing entitled “Examining Discrimination in the Automobile Loan and Insurance Industries.”

**Diversity:** The House Financial Services Committee’s Subcommittee on Diversity and Inclusion will hold a hearing entitled “Good for the Bottom Line: A Review of the Business Case for Diversity and Inclusion.”

**CFTC:** The House Agriculture Committee’s Subcommittee on Commodity Exchanges, Energy, and Credit will hold a hearing on the status of the Commodity Futures Trading Commission (CFTC). CFTC Chairman J. Christopher Giancarlo will testify at the hearing.

#### May 6

**Small Business Capital Formation Advisory Committee:** The Securities and Exchange Commission (SEC) will hold the first meeting

of its Small Business Capital Formation Advisory Committee.

#### May 7

**Data Privacy:** The Senate Banking Committee will hold a hearing entitled “Privacy Rights and Data Collection in a Digital Economy.”

#### May 8

**Homeownership:** The House Financial Services Committee’s Subcommittee on Housing, Community Development and Insurance will hold a hearing entitled “A Review of the State of and Barriers to Minority Homeownership.”

#### May 8-9

**Markup:** The House Financial Services Committee will hold a markup. The agenda for the markup has not been announced.

#### May 15

**Worker Rights:** The House Financial Services Committee’s Subcommittee on Investor Protection, Entrepreneurship and Capital Markets will hold a hearing entitled “Promoting Economic Growth: A Review of Proposals to Strengthen the Rights and Protections for Workers.”

**Sanctions:** The House Financial Services Committee’s Subcommittee on National Security, International Development and Monetary Policy will hold a hearing entitled “Assessing the Use of Sanctions in Addressing National Security and Foreign Policy Challenges.”

**Financial Regulators:** The Senate Banking Committee will hold a hearing entitled “Oversight of Financial Regulators.” The witnesses at the hearing will be: The Honorable Joseph M. Otting, Comptroller, Office of the Comptroller of the Currency; The Honorable

Randal K. Quarles, Vice Chairman for Supervision, Board of Governors of the Federal Reserve System; The Honorable Jelena McWilliams, Chairman, Federal Deposit Insurance Corporation; and The Honorable Rodney E. Hood, Chairman, National Credit Union Administration.

### **May 16**

***Prudential Regulators:*** The House Financial Services Committee will hold a hearing entitled “Oversight of Prudential Regulators: Ensuring the Safety, Soundness and Accountability of Megabanks and Other Depository Institutions.”

### **May 21**

***HUD:*** The House Financial Services Committee will hold a hearing entitled “Housing in America: Oversight of the U.S. Department of Housing and Urban Development.”

### **May 31**

***Financial Technology:*** The Securities and Exchange Commission’s (SEC) Strategic Hub for Innovation and Financial Technology (FinHub) will hold its 2019 FinTech Forum to discuss distributed ledger technology and digital assets. The event will include panels on: (1) Capital Formation Considerations; (2) Trading and Markets Considerations; (3) Investment Management Considerations; and (4) Distributed Ledger Technology Innovations: Industry Trends and Specific Use Cases for Financial Markets.

*For more information about financial services issues you may email [Joel Oswald](mailto:Joel.Oswald) or [Alex Barcham](mailto:Alex.Barcham).*

## **HEALTH**

### **Medicare Trustees Latest Issue Latest Projections**

#### *Key Points:*

- *The 2019 Medicare Trustees Report found the Hospital Insurance Trust Fund with funds Medicare Part A will be able to pay full benefits until 2026.*
- *Medicare costs are projected to grow to 5.9 percent of GDP by 2038.*

On April 22, the Medicare Board of Trustees released its annual report on the Hospital Insurance (HI) Trust Fund with funds Medicare Part A and the Supplementary Medical Insurance (SMI) Trust Fund which funds Medicare Part B and D.

The HI Trust Fund will be able to pay full benefits until 2026 which is the same as the 2018 projection. There was an increase in the actuarial deficit due to lower assumed productivity growth as well as higher costs and lower income in 2018 than expected. Total Medicare costs in both trust funds will grow from 3.7 percent of GDP in 2018 to 5.9 percent by 2038. Thereafter, costs will gradually increase to 6.5 percent of GDP by 2093.

The SMI Trust Fund had \$104 billion in assets at the end of 2018. This fund is expected to continue to be adequately financed because premium income and general revenue income are reset annually to cover expected Part B costs. Costs are projected to grow from 2.1 of GDP in 2019 to 3.7 percent of GDP in 2038. For Part D, drug spending projections are lower than the 2018 report due to slower price growth and a continuing trend of higher manufacturer rebates.

Read the full report [here](#).

## Upcoming Hearings and Meetings

### April 30

**Opioids:** The National Academy of Medicine will hold an event entitled “Action Collaborative on Countering the U.S. Opioid Epidemic – April Meeting.”

**Medicare:** The House Rules Committee will hold a hearing on “H.R. 1384 - Medicare for All Act of 2019.”

**Drug Prices:** The House Energy and Commerce Committee will hold a hearing on “Prescription Drug Coverage in the Medicare Program.”

**Appropriations:** The House Appropriations Committee’s Labor, Health and Human Services, Education, and Related Agencies Subcommittee will hold a markup of the FY2020 Labor, Health and Human Services, Education, and Related Agencies appropriations bill.

*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

### USMCA Hits Enforcement Roadblocks

#### *Key Points:*

- The ITC Report was released and projects increases in real GDP and employment.
- The AFL-CIO and some Democrats still have issues with the dispute settlement and enforcement process.
- The USMCA is unlikely to pass before August recess.

The U.S. International Trade Commission (ITC) released a [report](#) on April 18, outlining the likely impact of the United States-Mexico-Canada Agreement (USMCA). According to the model that the ITC used, if fully implemented and enforced the USMCA would have a positive impact on U.S. real GDP and employment. The elements of the agreement that would have the most significant effects on the U.S. economy are: (1) provisions that reduce policy uncertainty about digital trade; and (2) certain new rules of origin applicable to the automotive sector. Of interest to stakeholders in many sectors are USMCA’s new international data transfer provisions, including provisions that largely prohibit forced localization of computing facilities and restrictions on cross-border data flows. Additionally, the USMCA would strengthen and add complexity to the rules of origin requirements in the automotive sector by increasing regional value content (RVC) requirements and adding other requirements. The USMCA’s requirements are estimated to increase U.S. production of automotive parts and employment in the sector, but also to lead to a small increase in the prices and small decrease in the consumption of vehicles in the U.S. Lastly, the agreement would establish commitments to open flows of data, which would positively impact a wide range of industries that rely on international data transfers.

The USMCA would reduce the scope of the investor-state dispute settlement (ISDS) mechanism, a change that would reduce U.S. investment in Mexico and could lead to a small increase in U.S. domestic investment and output in the manufacturing and mining sectors. The ITC’s model estimates that the USMCA would raise U.S. real GDP by \$68.2 billion (0.35 percent) and U.S. employment by 176,000 jobs (0.12 percent). According to the model, the USMCA would likely have a

positive impact on U.S. trade, both with USMCA partners and with the rest of the world. U.S. exports to Canada and Mexico would increase by \$19.1 billion (5.9 percent) and \$14.2 billion (6.7 percent), respectively. U.S. imports from Canada and Mexico would increase by \$19.1 billion (4.8 percent) and \$12.4 billion (3.8 percent), respectively. Manufacturing would experience the largest percentage gains in output, exports, wages, and employment, while in absolute terms, services would experience the largest gains in output and employment.

A group of 25 Democrat Congressmen this week expressed concern with some flaws in NAFTA's dispute settlement process, and are questioning whether to support the USMCA. In a letter to U.S. Trade Representative (USTR) Robert Lighthizer, the legislators noted that despite the incorporation and advancement of labor and environment provisions in U.S. trade agreements, since 1993, no environmental disputes have ever been litigated and only one labor enforcement dispute has ever been pursued under a U.S. trade agreement. In an April 24 statement Celeste Drake, the AFL-CIO's trade policy specialist, reiterated calls to change the deal's text. She said, "enforcement cannot happen unless the text is repaired to make sure that one party cannot block enforcement, unless labor loopholes are eliminated, unless new swift and certain monitoring and enforcement tools are added, and unless adequate, long-term resources are devoted to enforcement." Due to the persistence of the enforcement issue, as well as continued concerns over labor and the environment, former Capitol Hill and USTR staffers do not believe it is likely that the USMCA will pass before the August recess.

## U.S.-China Negotiations Wrapping Up

### *Key Points:*

- The U.S. and China are discussing the next round of trade talks.
- Face-to-Face meetings continue, with optimistic reports indicating a deal may be reached in late May.
- Gradual tariff reductions are likely as part of a deal.

USTR Lighthizer and Treasury Secretary Steven Mnuchin will travel to Beijing next week to continue talks aimed at striking a bilateral deal, with a Chinese delegation scheduled to visit Washington, DC, the following week (May 6). The White House announced on Tuesday that the talks, which begin April 30, will cover intellectual property, forced technology transfer, non-tariff barriers, agriculture, services, purchases and enforcement. Reports indicate that the U.S. and China are focused heavily on tariff-centered enforcement, with the Trump Administration eyeing the use of "snap-back" restrictions in addition to multi-level consultations as it pushes to complete a deal in the coming weeks. President Trump said Wednesday that the negotiations were "moving along quite well." The April-May itinerary for the talks loosely corresponds to a goal President Trump outlined on April 4 in a White House meeting with China's Vice Premier Liu He.

Senate Finance Committee Chairman Chuck Grassley (R-IA) said Wednesday that the enforcement mechanism underpinning the developing trade deal between the U.S. and China likely will involve a gradual reduction of tariffs by both sides as they prove compliance with the agreement's terms. He told reporters, "It seems to me the enforcement mechanism is last to be negotiated and has been negotiated, and it involves periodic reductions of tariffs, both on the part of the United States and China at roughly the same time when they've

shown proof of good faith carrying out of the agreement, and it will probably be done in tranches.”

### **EU Approves Negotiating Mandate, U.S. Wants Agriculture Included**

*Key Points:*

- Inclusion of agriculture continues to be an issue.
- Senator Grassley argued that without agriculture the U.S. will get a worse deal.

The EU formally approved its negotiating mandate earlier this week, excluding agriculture from the scope of the negotiations and without the additional strong language on environmental concerns that France wanted. France voted against the mandates, but they were nonetheless approved by a qualified majority of member states. Senator Grassley released a statement following the mandate’s approval that any trade talks with the EU must include agriculture. He told reporters on Thursday that given the impasse over agriculture, he was not optimistic about the negotiations. Senator Grassley argued that having all sectors on the table would allow for better negotiations, noting specifically the potential for trade-offs between manufacturing and agriculture “to the benefit of agriculture.”

*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.*