

May 11, 2018

Washington Update

This Week in Congress

House – The House passed H.R. 4910, the **Veterans Cemetery Benefit Correction Act**; H.R. 4335, the **Servicemember Family Burial Act**; the **Congressional Review Act disapproval of the CFPB rule “Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act**; H.R. 2152, the **Citizens’ Right to Know Act**; H.R. 5645, the **Standard Merger and Acquisition Reviews Through Equal Rules Act** and H.R. 3053, the **Nuclear Waste Policy Amendments Act**.

Senate – The Senate passed S. 1732, **Improving Access to Behavioral Health IT**; H.R. 931, the **Firefighter Cancer Registry Act of 2017** and confirmed **Kurt D. Engelhardt**, to be United States Circuit Judge for the Fifth Circuit and **Michael B. Brennan** to be United States Circuit Judge for the Seventh Circuit.

Next Week in Congress

House – The House may consider H.R. 2, the **Agriculture and Nutrition Act of 2018 (Farm Bill)**.

Senate – The Senate may consider the nominations of **Joel M. Carson III** to be United States Circuit Judge for the Tenth Circuit; **John B. Nalbandian** to be United States Circuit Judge for the Sixth Circuit; **Michael Y. Scudder** to be United States Circuit Judge for the Seventh Circuit and **Amy J. St. Eve** to be United States Circuit Judge for the Seventh Circuit.

TAX

Ways and Means Committee Announces a Series of Hearings on Tax Cuts and Jobs Act; First Hearing Next Week

Key Points:

- *House Ways and Means Committee Chairman Kevin Brady (R-TX) announced a series of tax hearings that will focus on the Tax Cuts and Jobs Act.*
- *The first hearing will take place on May 16 and will review the 2017 tax law’s economic effects.*

House Ways and Means Committee Chairman Kevin Brady (R-TX) and Tax Policy Subcommittee Chairman Vern Buchanan (R-FL) recently announced a series of hearings focused on the Tax Cuts and Jobs Act (TCJA). According to Chairman Brady, “This hearing series will focus on how the economy is

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expanding thanks to tax reform and how we are keeping our workers competitive, increasing people's paychecks, and making America even stronger and more innovative." The first hearing scheduled for next week is titled "Growing our Economy and Creating Jobs," and according to the hearing announcement will focus on the "positive economic developments since enactment of the Tax Cuts and Jobs Act." The committee has not yet released the witness list for the hearing, although Chairman Brady said that it will likely include previous witnesses who encouraged the committee to pursue tax reform.

The first hearing, "Growing our Economy and Creating Jobs," is scheduled for Wednesday, May 16 in 1100 Longworth House Office Building, beginning at 10:00 AM.

Ways and Means Chairman Kevin Brady Continues to Push Second Tax Bill This Year

Key Points:

- *According to House Ways and Means Committee Chairman Kevin Brady (R-TX) any new tax cuts will focus on the middle class and will be "family friendly"*
- *House Minority Leader Nancy Pelosi (D-CA) said this week that House Democrats would revisit the 2017 tax cuts if they win control of the House following the November election with a focus on reducing its costs*

According to House Ways and Means Committee Chairman Kevin Brady (R-TX), the second round of tax cuts will make the tax code more "family friendly." According to Brady, the effort will include tax reforms targeted toward changes to education and retirement tax incentives. He said, the family tax bill could include "taking about 14 different education savings plans and looking to streamline them into three or four that are more consumer

friendly and are more flexible." Brady added that the goal is to vote on the new cuts prior to the midterm elections and that tax writers are committed to working through May on the matter.

In separate events this week, House Minority Leader Nancy Pelosi (D-CA) outlined her plans to revisit the tax bill should Democrats win control of the House following the November midterm elections. Leader Pelosi said that she will seek to revise the tax cut bill to reverse its estimated \$1.9 trillion increase to federal budget deficits. Pelosi said, "The tax bill is a dark cloud over our children's future. We want to revisit in a way that puts the middle class first and reduces the debt." She did not describe which tax cuts she would reverse or other policy specifics, only saying broadly that the effort would focus on investing in U.S. manufacturing and tax relief for middle-income families. Pelosi said after a press conference with union members, it would include "lowering the tax scam" that she said gave "corporate America a big tax break, including the opportunity to ship jobs overseas." She added that Democrats would work in a bipartisan and "transparent" manner to negotiate an extension of the middle-class tax cuts for individuals, which are set to expire in 2026.

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

FINANCIAL SERVICES

House Passes Resolution Repealing the CFPB's Indirect Auto Lending Guidance

Key Points:

- *The House passed a resolution disapproving the CFPB's guidance on indirect auto lending.*

- *The resolution will now go to the President for his signature.*

On May 8, the House passed [S.J. Res. 57](#), a joint resolution providing for congressional disapproval of the guidance submitted by the Consumer Financial Protection Bureau (CFPB) relating to “Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act,” by a vote of 234-175. The resolution, introduced by Senator Jerry Moran (R-KS), passed the Senate on April 18 by a vote of 51-47.

The resolution will now go to the President for his signature. In April, the White House issued a [Statement of Administration Policy](#) (SAP) indicating that the President would sign the resolution if it were passed by Congress. The SAP stated that:

This bulletin limits the ability of auto dealers to offer auto loans to their customers and was not issued pursuant to notice-and-comment rulemaking. As a result, the CFPB failed to allow the public to comment before it made significant changes to an important sector of the economy. Further, the Dodd-Frank Act explicitly excludes the regulation of auto dealers from the CFPB’s jurisdiction. Disapproving this bulletin, therefore, would provide consumers with more options for auto financing while ensuring that the CFPB abides by congressional limits on its jurisdiction. Federal regulators would retain their authorities to enforce ECOA with respect to auto lending.

House Financial Services Committee Chairman Jeb Hensarling (R-TX) issued a [press release](#) expressing support for the resolution. The release noted that in a speech on the House Floor Hensarling stated:

Analysis by the Wall Street Journal shows that many credit worthy borrowers, because of what the Bureau has done, will have to pay up to \$586 more... for their auto loans because of what the Bureau has done. Because of that, under the Congressional Review Act, it is time for Congress to say “we said what we mean, we are going to protect consumers, we are going to overturn the Bureau’s guidance, and we’re going to do it today.”

Upcoming Hearings and Events

May 15

Federal Reserve Nominations: The Senate Banking Committee will hold a hearing to discuss the nominations of Richard Clarida to be a Federal Reserve Vice Chairman and Governor; and Michelle Bowman to be Federal Reserve Governor.

FTA/Commerce/HUD Nominations Vote: The Senate Banking Committee will hold an executive session to vote on the nominations of Thelma Drake to be Administrator of the Federal Transit Administration; Jeffrey Nadaner to be Assistant Commerce of Secretary for Export Enforcement; and Seth Appleton to be Assistant Secretary of Housing and Urban Development (HUD) for Policy Development and Research.

May 16

SEC Division of Oversight: The House Financial Services Committee’s Subcommittee on Capital Markets, Securities, and Investment will hold hearing on oversight of the Securities and Exchange Commission’s (SEC) Division of Enforcement.

Customer Due Diligence Rule: The House Financial Services Committee’s Subcommittee on Terrorism and Illicit Finance will hold a hearing on implementation of the Financial Crimes Enforcement Network’s (FinCEN) customer due diligence rule.

May 17

Credit Union Advisory Council: The CFPB will hold a meeting of its Credit Union Advisory Council.

CDBG Disaster Relief Program: The House Financial Services Committee’s Subcommittee on Oversight and Investigations will hold a hearing on “Community Development Block Grant-Disaster Relief Program – Stakeholder Perspectives.”

Homelessness: The House Financial Services Committee’s Subcommittee on Housing and Insurance will hold a hearing entitled, “An Overview of Homelessness in America.”

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

HEALTH

President Trump Announces Blueprint to Address Prescription Drug Prices

Key Points:

- *President Donald Trump announced his blueprint to address prescription drug prices.*
- *The plan offers a range of proposals to implement four strategies: improved competition, better negotiation, incentives for lower list prices, and lowering out-of-pocket costs.*

On May 11, President Donald Trump announced his blueprint, American Patients

First, to address prescription drug prices. The blueprint identified four challenges in the drug market: high list prices for drugs; seniors and government programs overpaying for drugs due to lack of the latest negotiation tools; high and rising out-of-pocket costs for consumers; and foreign governments “free-riding” off of American investment in innovation. The blueprint looks to address these challenges in two phases. The first will be actions the President may direct the Department of Health and Human Services (HHS) to take immediately while the second phase will be actions HHS is actively considering on which feedback is being solicited.

The blueprint identifies four major strategies to address the challenge of high drug prices:

- *Increased Competition* – Immediate actions include preventing manufacturer gaming of the regulatory process, measures to promote innovation and competition for biologics, and developing proposals to stop Medicaid and Affordable Care Act programs from raising prices in the private market. Longer-term actions would include considering how to encourage sharing of samples needed for generic development and additional efforts to promote the use of biosimilars.
- *Better Negotiation* – Immediate actions include experimenting with value-based purchasing in federal programs, allowing more substitution in Medicare Part D, reforming Medicare Part D to give plan sponsors significantly more power when negotiating with manufacturers, and leveraging the Competitive Acquisition Program in Medicare Part B. Longer-term actions would include considering indication-based pricing, requiring site neutrality in payment, evaluating the accuracy and usefulness of current national drug

spending data, and addressing foreign government threats of compulsory licensing or IP theft.

- *Incentives for Lower List Prices* – In order to lower list prices, immediate actions would include the Food and Drug Administration evaluation of requiring manufacturers to include list prices in advertising and updating Medicare’s drug-pricing dashboard to make prices more competitive and transparent. Longer term actions would include measures to restrict the use of rebates including revisiting the safe harbor under the Anti-Kickback statute, using incentives to discourage manufacturer price increases for drugs used in Medicare Part B and Part D, and considering fiduciary status for pharmacy benefit managers.
- *Lowering Out-of-Pocket Costs* – Immediate actions would involve eliminating the gag clause from Medicare Part D contracts preventing pharmacists from telling patients when they could pay less out-of-pocket by not using insurance, and improving the usefulness of the Part D Explanation of Benefits statement by including information about drug price increases and lower cost alternatives. Longer term opportunities would include additional measures to inform Medicare Part B and Part D beneficiaries about lower-cost alternatives and providing better information on costs to Part D beneficiaries.

During his remarks, President Trump stressed the Administration has already taken steps to help lower the cost of prescription drugs. He pointed out the Food and Drug Administration (FDA) had the highest number of generic approvals in 2017, approving over 1,000 drugs saving the American people almost \$9 billion.

He asserted Americans deserve a health care system that takes care of them, not one that takes advantage of them.

HHS Secretary Alex Azar stated the President has made it clear how important it is to bring down health care costs for the American people. He offered examples of reforms in the blueprint including having the FDA examine requiring manufacturers to disclose prices in pharmaceutical ads and bring negotiation tools to government programs.

Read the full blueprint [here](#) and the White House fact sheet [here](#).

House Committee Advances Legislation to Combat the Opioid Crisis

Key Points:

- *The House Energy and Commerce Committee favorably reported 25 bills aimed at addressing the opioid crisis.*
- *The Committee plans to hold a second markup on May 17 to consider additional legislation. The Subcommittee had previously favorably reported 56 bills.*

On May 9, the House Energy and Commerce Committee held its first of two markups planned to report bills to address the opioid crisis. At the first markup, the Committee favorably reported 25 bills by voice vote.

Chairman Greg Walden (R-OR) stated these bills will address coverage and payment issues and help vulnerable patients get the treatment they need. He asserted after next week’s markup, the Committee will send the package to the full House for action. He emphasized these bills represent months of work. Ranking Member Frank Pallone (D-NJ) explained he will evaluate this legislation based on two principles: whether the proposal meaningfully improves access to treatment for opioid use

disorders or whether the proposal helps to prevent people from getting addicted to opioids or whether the proposal helps to prevent people from getting addicted to opioids.

The Committee adopted the following bills:

- H.R. 4275, Empowering Pharmacists in the Fight Against Opioid Abuse Act;
- H.R. 5041, Safe Disposal of Unused Medication Act, as amended;
- H.R. 5202, Ensuring Patient Access to Substance Use Disorder Treatments Act of 2018;
- H.R. 5483, Special Registration for Telemedicine Clarification Act of 2018;
- H.R. 449, Synthetic Drug Awareness Act of 2017;
- H.R. 4284, INFO Act of 2017, as amended;
- H.R. 5002, ACE Research Act;
- H.R. 5009, Jessie’s Law, as amended;
- H.R. 5102, Substance Use Disorder Workforce Loan Repayment Act of 2018;
- H.R. 5176, Preventing Overdoses While in Emergency Rooms Act of 2018;
- H.R. 5197, Alternatives to Opioids (ALTO) in the Emergency Department Act, as amended;
- H.R. 5261, TEACH to Combat Addiction Act of 2018;
- H.R. 5272, Reinforcing Evidence-Based Standards Under Law in Treating Substance Abuse Act of 2018;
- H.R. 5327, Comprehensive Opioid Recovery Centers Act 2018, as amended;
- H.R. 5353, Eliminating Opioid-Related Infectious Diseases Act of 2018;
- H.R. 3331, To amend title XI of the Social Security Act to promote testing of incentive payments for behavioral

health providers for adoption and use of certified electronic health record technology, as amended;

- H.R. 5685, Medicare Opioid Safety Education Act;
- H.R. 3528, Every Prescription Conveyed Securely Act, as amended;
- H.R. 4841, Standardizing Electronic Prior Authorization for Safe Prescribing Act, as amended;
- H.R. 5582, Abuse Deterrent Access Act of 2018, as amended;
- H.R. 5675, To amend title XVIII of the Social Security Act to require prescription drug plan sponsors under the Medicare program to establish drug management programs for at-risk beneficiaries;
- H.R. 5684, Protecting Seniors from Opioid Abuse Act;
- H.R. 5686, Medicare Clear Health Options in Care for Enrollees (CHOICE) Act;
- H.R. 5333, the Over-the-Counter Monograph Safety, Innovation, and Reform Act of 2018, as amended;
- H.R. 5473, Better Pain Management Through Better Data Act of 2018;
- H.R. 5554, To amend the Federal Food, Drug, and Cosmetic Act to reauthorize user fee
- programs relating to new animal drugs and generic new animal drugs, as amended; and
- H.R. 5687, Securing Opioids and Unused Narcotics with Deliberate Disposal and Packaging Act of 2018.

Upcoming Hearings and Meetings

May 15

Health Care: Washington Post will hold a discussion on “America’s Health Future”

focusing on how challenges posed by chronic diseases, access to health insurance, and the future of Medicaid will affect the health of all Americans.

340B: The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “Examining Oversight Reports on the 340B Drug Pricing Program.”

May 16

Value: The American Enterprise Institute will hold a discussion on “Fixing Health Care: Driving Value Through Smart Purchasing and Policy.”

May 17

Opioids: The House Energy and Commerce Committee will hold its second markup of opioid legislation.

Opioids: The National Journal will hold a webinar on “Understanding the Opioid Epidemic: A look at its origins, key players and potential responses.”

Mental Health: The National Coalition on Mental Health and Aging, the National Association of County Behavioral Health and Developmental Disability Directors, the National Association for Rural Mental Health, and the National Association of Counties will hold a briefing on “Addressing the Crisis in Older Adult Mental Health.”

Biodefense: The Center for Strategic and International Studies will hold a symposium on “Pandemic Preparedness: Policy and Practice in the 21st Century.”

NIH Budget: The Senate Appropriations Committee will hold a hearing on the proposed

budget estimates and justification for FY2019 for the National Institutes of Health.

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

TRADE

Speaker Ryan and United States Trade Representative Lighthizer warn of New NAFTA deadline

Key Points:

- *Trade Promotion Authority (TPA) law that authorized negotiations sets minimum number of days before bill can be introduced and passed.*
- *USTR Lighthizer says deadline to pass with this Congress is before May 21.*

A series of notification requirements, including a notification to Congress 90 days ahead of the administration’s intention to sign a new agreement and a report from the U.S. International Trade Commission within 105 days of signing mean that any Congressional action on the agreement would come in November or December with a lame-duck Congress. USTR Lighthizer said “Putting the deal before a different Congress changes the whole way you kind of have to construct the deal. I believe if we don’t get it done in the next week of two then we’re on thin ice about whether it gets done before our election.” Speaker Paul Ryan said Congress would need notification by May 17. Auto rules of origin continue to be a major sticking-point in the negotiations. The U.S. is also pushing for a five-year sunset clause tied to trade balances.

Markup of Committee on Foreign Investment in the United States (CFIUS) Reform Legislation Delayed

Key Points:

- *Dispute between Treasury and Defense Departments on monitoring and review of outbound investments has delayed progress.*
- *Defense Secretary Mattis has pushed for the House and Senate to include the reform measure, the Foreign Investment Risk Review Modernization Act (FIRREA) in the must-pass National Defense Authorization Act (NDAA).*

Disagreement over how outbound investments, particularly joint ventures (JV's) will be monitored has caused a delay in passing CFIUS reform legislation. The Treasury Department has agreed that a separate measure on export controls by House Foreign Affairs Chairman Ed Royce (R-CA) would adequately cover those investments but the Defense Department would prefer CFIUS monitor those transactions that ultimately lead to the transfer of sensitive technology. House Financial Services Monetary Policy and Trade Subcommittee Chairman Andy Barr (R-KY) said "I think the biggest impediment in getting to a markup is a failure to reach an agreement on that outbound joint venture piece" adding, "I hear that over the past day or so there have been some productive conversations getting to the right place." Barr also cautioned that pairing the measure with the NDAA may not be the most appropriate vehicle for the bill.

Chinese Vice-Premier Liu He to Visit Washington next Week to Discuss Trade and Tariffs

Key Points:

- *Vice-Premier Liu is China's top economic advisor.*

- *Visit is a follow-up to talks this week in Beijing led by Treasury Secretary Steve Mnuchin.*
- *USTR convening hearing May 15 on Sec. 301 tariffs.*

Treasury Secretary Steve Mnuchin and the U.S. trade delegation returned to the U.S. this week without coming to an agreement with his Chinese counterparts on \$50 billion of Sec. 301 tariffs set to come into effect in the coming weeks. Mnuchin asked for the trade deficit with China to be reduced by \$200 billion by 2020 and state subsidizing of key "Make in China 2025" industries be stopped. The Chinese side asked for the Sec. 301 investigation to be terminated and key technologies allowed to be exported to China. Media coverage of the talks were positive, with the Communist Party's official paper saying: "clouds are starting to part and the fog begins to disperse" after more than a month of "wind and rain". USTR will hold a public hearing on May 15 to hear comments on the proposed remedies. Due to the number of witnesses asking for time to speak, USTR has said the hearing may be extended for multiple days.

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 Ryan Schnepf.