

October 12, 2018

Washington Update

This Week in Congress

House – The House is in recess until **November 13**.

Senate – The Senate passed a motion to concur to the House amendments to S. 3201, the **Water Resources Development Act** and, after reaching an **agreement on confirming a number of nominations and passage of legislative items under Unanimous Consent**, the Senate adjourned until November 13. A full list of confirmations and legislative items can be found [here](#).

Next Week in Congress

House – The House is in recess until **November 13**.

Senate – The Senate is in recess until **November 13**.

TAX

Congressional Democrats Promise Releasing Trump Tax Returns A Top Priority

Key Points:

- *Senate Minority Leader Chuck Schumer (D-NY) told reporters that any legal effort to make Trump's tax returns public should be accomplished.*
- *House Democrats have signaled that they intend to pursue the President's returns early in the next Congress should they win a majority in November.*

Democrats continued to preview their intentions of using congressional authority to retrieve and inspect President Trump's tax returns should they win a majority in November's midterm elections. Senate Minority Leader Chuck Schumer (D-NY) told reporters that "Any legal effort to make those

public should be accomplished." Senate Finance Committee Ranking Member Ron Wyden (D-OR) told reporters last week that he will ask to review Trump's returns in the next Congress.

House Democrats have echoed these sentiments and have added that if they win a majority in November, they will work to obtain the President's returns early on in the next Congress. On Wednesday, Democratic Minority Leader Nancy Pelosi (D-CA) said if Democrats win back the House in November "one of the first things" the party would do is demand President Donald Trump show his tax

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returns. Minority members of the House Ways and Means Committee have also called for hearings on how changes to the estate tax may have benefited Trump's family businesses.

Section 6103(f)(1) of the U.S. tax code allows the Chairman of the House Ways and Means or Senate Finance committees or of the Joint Committee on Taxation to formally request that the Treasury Department provide any individual's tax returns for review by the committee in a closed executive session. Officially, the request would go to Treasury Secretary Steve Mnuchin, who oversees the IRS and not to the President. From there, it is likely that Trump could fight the request with Justice Department or possibly private practice lawyers. If Congress were to obtain the tax records, the committee could then vote to make the return information public.

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

SEC Reopens Comment Period on Three Proposed Rules

Key Point:

- *The SEC reopened the comment periods on proposed rules related to: (1) capital, margin and segregation for swap dealers and major swap participants; (2) cross-border treatment of security-based swaps; and (3) capital requirements for security-based swap dealers which do not have a prudential regulator.*

At an October 11, [open meeting](#) the Securities and Exchange Commission (SEC) voted to reopen the comment period on three proposed rules: (1) capital, margin, and segregation requirements for security-based swap dealers

and major security-based swap participants, and amendments to Rule 15c3-1 for broker-dealers proposed in October 2012; (2) amendments proposed in May 2013 that would establish the cross-border treatment of security-based swap capital, margin, and segregation requirements; and (3) an amendment proposed in April 2014 that would establish an additional capital requirement for security-based swap dealers that do not have a prudential regulator. Commissioner Robert Jackson cast a dissenting vote. The comment period will remain open for 30 days following publication in the *Federal Register*.

Chairman Jay Clayton said the SEC has finalized many, but not all, of the requirements under Title VII of the Dodd-Frank Act (DFA). He stated that the recommendation would allow additional public comment on some of the pending requirements. He noted that the Commodity Futures Trading Commission (CFTC) and the prudential regulators have finalized related rules since the SEC proposed its rules. He said the SEC has worked to harmonize its rules with those of other regulators. He expressed support for reopening the comment periods for the proposals, stressing the need to constantly reevaluate the approach to regulation. Brett Redfearn, SEC Director of the Division of Trading and Markets, suggested that the comment periods should be reopened in light of regulatory and market developments.

Commissioner Robert Jackson dissented from the recommendation. He emphasized the importance of setting up the SBS regime, and said the SEC has failed to meet the requirements of Title VII of the DFA. He expressed concern that the recommendation would allow financial institutions to take excessive risks. He said financial institutions should not be allowed to take on more risk with less margin. He stated that financial

institutions are tightly interconnected, which can lead to systemic impacts on the market. Jackson said dealers are incentivized to risk their own failure, but it is in the public interest to reduce the risk of default. He said he could not support paring back capital and margin requirements.

Senate Banking Committee Discusses Cryptocurrency and Blockchain

Key Points:

- *Chairman Mike Crapo (R-ID) stated that the press surrounding cryptocurrency has been negative, focusing on the lack of enforcement and regulation.*
- *Ranking Member Sherrod Brown (D-OH) suggested there does not seem to be a real world application for blockchain, just a large number of scams.*

On October 11, the Senate Banking Committee held a [hearing](#) on “Exploring the Cryptocurrency and Blockchain Ecosystem.” Chairman Mike Crapo (R-ID) noted that Bitcoin’s creation has expanded uses for blockchain, and has started Initial Coin Offerings (ICOs) of other digital currencies. Crapo said the technology underpinning cryptocurrency is transforming the ability to access capital in the financial system; however, the press surrounding cryptocurrency has been negative, focusing on the lack of enforcement and regulation. Ranking Member Sherrod Brown (D-OH) stated that during the 2008 financial crisis, many Americans were searching for an alternative to the financial system that had failed. He said Bitcoin and other cryptocurrencies promised to make payments faster, easier and cheaper and to eliminate dependence on risky financial institutions. He suggested that there does not seem to be a real world application for blockchain, just a large number of scams. He said last month, the New York Attorney General released a report on

several cryptocurrency trading platforms that pointed to widespread manipulation and highlighted that they do not follow Anti-Money Laundering policies and Know Your Customer laws.

Dr. Nouriel Roubini, Professor of Economics and International Business, New York University Stern School of Business, testified that cryptocurrency is the “mother and father of financial bubbles” and that blockchain is nothing more than a glorified database. He explained that cryptocurrency assets are not currencies, as they are not a unit of account, not a means of payment and they are not a stable store of value. He said nobody uses Bitcoin as a means of transaction besides criminals and terrorists. Mr. Peter Van Valkenburgh, Director Of Research at Coin Center, explained in testimony that Bitcoin allows the transfer of value from anywhere in the world, only using a computer and an internet connection. He noted that this is revolutionary because there is no need to trust a middle-man. He said Bitcoin is the world’s first public digital payments infrastructure, available to all and not owned by a single entity.

When asked whether the world is better off because of blockchain and what broad scale applications of blockchain could be beneficial, Professor Nouriel Roubini stated that corporate blockchains that are private, permissioned and not distributed could improve the efficiency of a transaction. However, he suggested that public, permissionless blockchains are “not the answer.” He suggested that fintech is the “revolution needed.” Several Senators raised concerns over the ability of law enforcement to go after misuse of cryptocurrencies, Peter Van Valkenburgh stated that FinCEN was “first out of the gate” to say crypto-exchanges have to know their customer and file suspicious activity reports. He noted that all transactions are

recorded on the public ledger and law enforcement has become experts at monitoring Bitcoin for illicit action. Roubini stated that cryptocurrencies have been utilized for criminal activities. He explained the principle of the system is anonymity, which implies significant risk to law enforcement being able to prevent these bad acts. Senator Elizabeth Warren (D-MA) noted a study that found that 80 percent of initial coin offerings (ICOs) in 2017 were scams. She noted SEC Chairman Jay Clayton has suggested that ICOs should register as securities offerings. Van Valkenburgh agreed with that approach. He stated that the SEC has been deliberate in their approach and he suggested a token can be sold while following the securities laws.

Senate Commerce Discusses Data Privacy

Key Points:

- *Chairman John Thune (R-SD) stated that recent breaches have shown that industry self-regulation is no longer sufficient.*
- *Senator Ed Markey (D-MA) suggested consumers need knowledge that their data is being used, notice when a breach occurs, and have the ability to say “no.”*

On October 10, the Senate Commerce, Science, and Transportation Committee held a [hearing](#) entitled “Consumer Data Privacy: Examining Lessons from the European Union’s General Data Protection Regulation and the California Consumer Privacy Act.” Chairman John Thune (R-SD), in a [statement](#), noted his interest in how companies are complying with the European Union’s General Data Protection Regulation (GDPR) and the new California Consumer Privacy Act (CCPA). He suggested GDPR and CCPA have undoubtedly spurred the conversation about a national privacy framework, and they provide useful examples as the Committee contemplates federal legislation. He stated in

the wake of Facebook’s Cambridge Analytica scandal and other similar incidents, including a vulnerability in Google-plus accounts reported just this past week, it is increasingly clear that industry self-regulation in this area is not sufficient. Senator Ed Markey (D-MA) stated the data driven economy has changed how commerce is conducted and he suggested these changes have come at high costs to consumers. He noted that data and personal information is used as a commodity and consumers tend to be unaware of these practices. He suggested there is a need to provide control over data to consumers. He stated consumers need knowledge their data is being used, be provided notice when there is a breach, and have the ability to say no. Markey stated privacy should not become a luxury good that only the wealthy can afford.

Several Members asked about the GDPR. Andrea Jelinek, Chair of the European Data Protection Board, stated that most complaints have been related to consent. Senator Roger Wicker (R-MI) asked about companies shutting down their operations in the EU because of the GDPR and Chairman Thune asked about the costs of compliance. Jelinek stated that most companies were well prepared for the GDPR as they had two years to prepare. In terms of compliance costs, she suggested that companies that were in compliance with the Data Protection Directive of 1995 would not have high compliance costs as the GDPR was an evolution of that. When asked about the CCPA, Alastair Mactaggart, Board Chair, Californians for Consumer Privacy, explained the law utilizes several definitions from existing California law, ensures that mobile devices are covered, attempts to ensure that choice must be freely given, treats all personal information the same, and provides the state Attorney General the authority to pass additional regulations. Members raised concerns with consent and asked whether once given, consent

should be able to be withdrawn. Laura Moy, Georgetown Law Center on Privacy and Technology, stated that a choice has to be a real choice. She suggested that once consent is given a consumer should also have the ability to withdraw that consent. Moy went on to state that related to data collection, only the bare minimum of data needed to provide the services should be collected, there should be limits on how companies can utilize that data, consumers should be able to access and delete their data, there needs to be specific consent to gather data, data should only be stored for the time needed to provide the service, and consumers should be able to withdraw consent at any time.

Upcoming Hearings and Events

October 16

FSOC Open Meeting: The Financial Stability Oversight Council (FSOC) will hold an open meeting. The agenda for the meeting includes alternative reference rates and the collection of data on centrally cleared repurchase agreements by the Office of Financial Research, and Brexit.

October 18

Elder Financial Exploitation: The Consumer Financial Protection Bureau (CFPB) will hold a field hearing in Baton Rouge, Louisiana on preventing elder financial exploitation. The event will include remarks from CFPB Acting Director Mick Mulvaney.

October 25-26

Market Data/Access: The SEC will hold a two-day roundtable on market data and market access. The first day will include panel discussions on: Overview of Current Landscape for Market Data Products and Market Access Services; SIP Core Data

Products and Exchange Top-Of-Book Data; and Exchange Depth-of-Book Data Products and Market Access. Panel discussions on the second day include: Elements of the Core Data Infrastructure; Governance of Core Data Infrastructure; Funding of Core Data Infrastructure; and Public Transparency.

October 29

SEC Fixed Income Market Structure Advisory Committee: The Securities and Exchange Commission Fixed Income Market Structure Advisory Committee (FIMSAC) will meet to discuss updates and presentations from the subcommittees.

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 Signs Ban on Gag Clauses

Key Points:

- *President Donald Trump signed two bills which will ban the use gag clauses allowing pharmacists to inform patients of price differences for their medications.*
- *Department of Health and Human Services Secretary Alex Azar said there will be much more regulatory action coming to address prices.*

On October 10, President Donald Trump signed two bills banning pharmacy gag clauses. The Know the Lowest Price Act of 2018 (S. 2553) sponsored by Senator Debbie Stabenow (D-MI) applies to Medicare and Medicare Advantage. The Patient Right to Know Drug Prices Act (S.2554), sponsored by Senator Susan Collins (R-ME), applies to plans offered

on the individual market and group health plans.

At the signing, President Trump said this is an issue of “vital importance.” He stated these two bills “will lower the cost of prescription drugs.” He discussed the drug pricing blueprint released earlier this year “setting out a new agenda to drive down the drug prices for all Americans.” He reported 15 companies lowered their prices following the release of the blueprint. He noted Food and Drug Administration approvals have also “massively sped up” with more than 1,000 low-cost generics approved last year.

Department of Health and Human Services Secretary Alex Azar stressed gag clauses are about “preventing a patient from knowing they could pay less for drugs.” He praised the President’s effort to address prescription drug prices. Azar emphasized “this is the just the tip of the iceberg. In the weeks and months ahead, we have got so much more coming, in terms of regulatory action to bring down the price of drugs in this country.”

CMS Releases Data on 2019 Market Conditions

Key Point:

- *The Centers for Medicare and Medicaid Services released data showing average premiums on the exchanges are expected to drop by 1.5 percent.*

On October 11, the Centers for Medicare and Medicaid Services provided data on the 2019 exchanges. The data shows average premiums for the Second Lowest Cost Silver Plan is expected to drop by 1.5 percent. More health insurers are also entering the market in 2019.

CMS Administrator Seema Verma said, “despite predictions that our actions would

increase rates and destabilize markets, the opposite has happened.” She contended rates are still too high and ultimately the law needs to change to truly offer affordable health care.

CMS anticipates actual premium increases may be lower as consumers “buy-down” coverage with higher cost sharing and lower premiums. It predicts stabilizing premiums will also result in more health people in the risk pool.

CMS reports market participation is also improving from the drop in 2018. There will be 23 more issuers for 2019 when compared to open enrollment for 2018. In addition, 29 current issuers are expanding into more counties and the number of single-issuer counties has decreased.

Upcoming Hearings and Meetings

October 15

Nurse Practitioners: The American Enterprise Institute will hold a discussion on “Nurse Practitioners and America’s Primary Care Shortage.”

Complex Patients: The Healthcare Leadership Council will hold a briefing on “Addressing Needs for Complex Patient Populations.”

Delivery: The Economic Club of Washington will hold a discussion on disruption in the health care industry and the future of health care delivery.

October 16

Health Care: The U.S. Chamber of Commerce will hold its annual health care summit on “The Business of Health.”

Policy Outlook: The Alliance for Health Policy will host a webinar on “Potential Midterm Election Implications for Health Care.”

October 18

Health Care: The American Enterprise Institute will hold a discussion on “Positive Disruption in Health Care: What Will It Take?”

Diabetes and Opioids: Politico will hold a discussion on “A Tale of Two Crises: Using Tech and Innovation to combat opioid abuse and diabetes.”

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

TRADE

Administration Likely to Announce Formal Trade Negotiations with UK, EU, Japan

Key Points:

- *Lawmakers are expecting the Office of the U.S. Trade Representative (USTR) to notify them of its intent to begin formal trade talks with the UK, EU, and Japan.*
- *USTR reportedly also planned to announce its intent to begin negotiations with the Philippines but is delaying because of some Democratic Senators’ concerns.*

The U.S. Trade Representative (USTR) is expected to notify Congress shortly of its intent to begin trade talks with the UK, EU, and Japan. Senate Finance Committee Chairman Orrin Hatch (R-UT) said he was “hopeful” Congress would receive the notifications this week. After a Senate Advisory Group on Negotiations (SAGON) meeting with USTR Robert Lighthizer, Senator Ben Cardin (D-MD) said he would “not be surprised” to receive the

notifications this week. USTR Lighthizer at the SAGON meeting reportedly also suggested engaging in trade talks with the Philippines but was met with opposition from Democratic senators. Senate Finance Committee ranking member Ron Wyden (D-OR) expressed concern about “undertaking trade negotiations with a Philippine president who brags about a bloody drug war that has reportedly claimed 12,000 lives.”

It remains to be seen how open the UK, EU, and Japan will be to formal trade discussions. EU Trade Commissioner Cecilia Malmström said last week a formal trade deal is “not on the table.” The EU Commission must also obtain a mandate from each member country before beginning negotiations. French President Emmanuel Macron has argued the EU should not negotiate with countries that are not part of the Paris Climate Agreement. Japanese trade officials have said they will not allow the U.S. greater market access than it would have under the Trans-Pacific Partnership (TPP). Japanese Prime Minister Shinzo Abe added that a deal with the U.S. would be “completely different from the free trade agreements that Japan had made in the past.” Finally, the UK cannot implement a new trade deal until Brexit is complete, including any transition period. EU law dictates the UK must finalize its departure by April 2019.

Treasury to Begin Implementation of FIRRMA with CFIUS Pilot Program

Key Point:

- *The Department of Treasury [announced](#) it is implementing a [pilot program](#) and “temporary regulations to protect critical American technology and intellectual property from potentially harmful foreign acquisitions,” using tools enacted in the Foreign Investment Review Modernization Act of 2018 (FIRRMA).*

On Wednesday, Treasury Secretary Steven Mnuchin announced the “first step” of Foreign Investment Review Modernization Act of 2018 (FIRRMA) implementation. He said the “temporary regulations address specific risks to U.S. critical technology while informing the development of final regulations that will fully implement FIRRMA.” The temporary regulations make revisions to existing CFIUS regulations “primarily to implement provisions of FIRRMA that became immediately effective upon its enactment.” The regulations are effective October 11, 2018.

FIRRMA also enables CFIUS to use pilot programs to implement provisions that did not go into effect upon enactment; full FIRRMA implementation must be completed by February 2020. According to the Treasury, the “pilot program implements authorities that expand the scope of transactions subject to CFIUS review to include certain non-controlling investments in U.S. businesses involved in critical technologies related to specific industries. The pilot program also makes effective FIRRMA’s mandatory declarations provision for transactions that fall within the scope of the pilot program. The pilot program will end no later than the date on which the final FIRRMA regulations are fully implemented.” The pilot program requires foreign investors to submit short, five-page mandatory declarations to CFIUS. CFIUS will then respond within 30 days and either approve the transaction or request more information. The program covers non-controlling investments in 27 industries seen as vital to national security and is set to begin November 10, 2018.

President Trump, Xi Jinping to Meet at G-20 Summit

Key Point:

- *While not finalized yet, the White House is arranging for President Trump and Chinese leader Xi Jinping to meet at the G-20 Summit.*

The White House has in recent days informed Beijing that it would proceed with the summit meeting at the Group of 20 leaders’ summit in Buenos Aires at the end of November. There is hope that an encounter could provide an opportunity for both sides to ease the escalating trade tensions. Treasury Secretary Steven Mnuchin and National Economic Council (NEC) Director Larry Kudlow have reportedly been pressuring the White House to arrange a meeting between President Trump and Xi Jinping next month. Director Kudlow told reporters this week that, “I believe it’s always better to talk than not to talk. But, thus far their response has been unsatisfactory to our asks.” Next week the Treasury is expected to find China has not been manipulating its currency, further suggesting it is attempting to smooth relations between the U.S. and China.

Upcoming Events

October 17

Senate Armed Services – China’s Presence/Investment in Africa: Emerging Threats and Capabilities Subcommittee (Chairwoman Joni Ernst, R-Iowa) of Senate Armed Services Committee hearing on “Implications of China’s Presence and Investment in Africa.”

October 18

ITA/DOC Meeting: Commerce Department; International Trade Administration (F.R. Page

49908) will hold a meeting of the Advisory Committee on Supply Chain Competitiveness, October 17-18. Agenda includes: major competitiveness-related topics raised at the previous Committee meetings, including trade and competitiveness; freight movement and policy; trade innovation; regulatory issues; finance and infrastructure; and workforce development

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.