

April 6, 2018

## Washington Update

### Next Week in Congress

**House-** The House may consider H.R.4061 the **Financial Stability Oversight Council Improvement Act of 2017** and H.R.4790 the **Volcker Rule Regulatory Harmonization Act**.

**Senate** – The Senate may consider the nomination of **Claria Horn Boom**, to be US District Judge for the Eastern and Western Districts of Kentucky as well as **John F. Ring**, to be a Member of the National Labor Relations Board; **Patrick Pizzella**, to be Deputy Secretary of Labor; **Andrew Wheeler**, to be Deputy Administrator of the EPA; **John W. Broomes**, to be United States District Judge for the District of Kansas; and **Rebecca Grady Jennings**, to be United States District Judge for the Western District.

### TAX

#### **Internal Revenue Service (IRS) Issues New Guidance on Business Interest Expense Limitation and Repatriation**

##### *Key Points:*

- *The IRS and Treasury Department release guidance for computing the business interest expense limitation under section 163(j) and items related to the repatriation tax under section 965 of the Tax Cuts and Jobs Act.*
- *For section 163(j) – the notice explains that new regulations would address the calculation at the level of a consolidated group of corporations.*
- *For section 965 – the notice addresses the inclusion of the “foreign cash positions” for “specified foreign corporations” that are transferred by U.S. shareholders.*
- *The IRS also states that it will prioritize creating an appeals process for the new partnership audit regime in the near future.*

On Monday, the Internal Revenue Service (IRS) issued guidance ([Notice 2018-28](#)) for

computing the business interest expense limitation under section 163(j). Under the recently passed Tax Cuts and Jobs Act (TCJA), section 163(j) imposes a limitation on deductions for business interest incurred by certain businesses. The notice released on Monday explains aspects of the regulations that are intended to be issued, including rules that address the calculation of the business interest expense limitation at the level of a consolidated group of corporations. Other rules would help clarify aspects of the law that apply to corporations. In addition, the notice clearly states that partners in partnerships and S corporation shareholders cannot use section 163(j) as a way to “double count” the business interest income of a partnership or S corporation.

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Also on Monday, the IRS released a notice ([Notice 2018-26](#)) that describes a series of new rules and procedures relating to computations of certain items in regard to the repatriation tax, anti-abuse rules, and certain special elections under or related to section 965 of TCJA. The new tax code imposes a repatriation tax on untaxed foreign earnings of foreign subsidiaries of U.S. companies. The notice helps identify future regulations under section 965 that the IRS and Treasury Department plan to issue. Specifically, the notice stated that future rules will address the inclusion of the “foreign cash positions” for “specified foreign corporations” (SFC) that are transferred by the U.S. shareholder on the various cash measurement dates set in section 965. Additionally, the notice explains that taxpayers will be allowed to take into account the share of foreign income taxes paid or accrued by SFCs between November 2, 2017, and December 31, 2017 when determining the earnings and profits of SFCs subject to the repatriation tax.

The IRS has also stated that creating an appeals process for the new partnership audit regime will be a priority in the coming months. Current regulations do not address how the IRS handles disputes over requested modifications to imputed underpayments within the new audit regime.

### **Senate Finance Committee Hearing with Acting IRS Commissioner David Kautter Set for April 12**

#### *Key Points:*

- *Acting IRS Commissioner David Kautter will testify before the Senate Finance Committee on April 12 to explain how the IRS has been implementing the new TCJA.*

- *A House Floor vote for Representatives Lynn Jenkins (R-KS) and John Lewis’ (D-GA) IRS Reform bill could occur by April 17.*

On April 12, 2018, Acting IRS Commissioner David Kautter will appear before the Senate Finance Committee in order to give lawmakers the opportunity to hear how the IRS is implementing TCJA. According to Chairman Orrin Hatch (R-UT), “Acting Commissioner Kautter will come before the Finance Committee to discuss the agency’s plans to address current challenges, as well as its efforts to ensure that the current tax season goes smoothly and efficiently.” Senator Ben Cardin (D-MD) added that he expects a number of questions related to TCJA’s new passthrough provisions as well as the issue of prepaying property taxes in order to take the state and local tax deduction. The hearing is scheduled to start at 10:00 a.m. in 215 Dirksen Senate Office Building.

The IRS reform bill introduced by Representatives Lynn Jenkins (R-KS) and John Lewis (D-GA) may receive a House Floor vote once the Ways and Means Committee’s Oversight Subcommittee considers the legislation. According to a House Republican aide, the bill may reach the Floor by April 17. There has not been any discussion relating to a Senate bill as of yet.

*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****Treasury Department Releases Report on the Community Reinvestment Act***Key Point:*

- *The Treasury Department issued a report providing recommendations for modernizing and improving implementation of the Community Reinvestment Act.*

On April 3, the Treasury Department released a [report](#) on the Community Reinvestment Act (CRA). In the Treasury Department's [report outlining regulatory reform recommendations for banks and credit unions](#), the Treasury Department committed to performing a review of the CRA framework. The CRA report fulfills that commitment and provides recommendations to the Office of the Comptroller of the Currency (OCC), the Federal Reserve, and the Federal Deposit Insurance Corporation (FDIC) in four main areas: assessment; examination clarity and flexibility; examination process; and performance.

Specifically, the following are recommendations included in the report:

- Treasury recommends revisiting the approach of determining assessment areas. CRA's concept of community should account for the current range of alternative channels that exist for accepting deposits and providing services arising from the ongoing evolution of digital banking.
- Treasury recommends that any framework for CRA reform should consider several key elements including:
  - Expansion of the types of loans, investments, and services eligible for CRA credit;
  - Establishment of clearer standards for eligibility for CRA credit, with greater consistency and

predictability across each of the regulators; and

- Simplified record-keeping procedures, designed to make eligibility updates more regular and timely.
- Treasury recommends revisiting CRA's definition of assessment area in order to take into account the realities of a rapidly changing banking industry.
- Treasury advocates for an approach to the administration of CRA that incorporates less subjective evaluation techniques. Establishing clear criteria for grading CRA loans, investments, and services will lead to more accountable outcomes, result in more consistent, timely, and understandable ratings, and establish a basis against which banks can gauge their performance.
- Treasury believes that establishing a modernized, forward-looking approach to the Service Test is critical. The ongoing adoption of alternative delivery channels will continue to lessen the relevance of physical branches to all communities, including LMI [low- and moderate-income] communities, over time.
- Treasury recommends that the CRA regulators standardize the CRA examination schedules. Treasury supports statutory changes, if necessary, that would enable more timely evaluations and ratings.
- Treasury recommends that the CRA regulators adopt uniform guidance that considers whether there is a logical nexus between the CRA rating and evidence of discriminatory or illegal credit practices in the bank's CRA lending activities while also giving consideration to the remediation efforts undertaken by the bank.
- Treasury recommends that CRA performance evaluations not be delayed due to pending consumer protection law investigations or enforcement actions.
- Treasury recommends that the FDIC and FRB adopt policies and procedures that are generally aligned with changes adopted by the OCC for evaluating various bank applications.

- Treasury recommends that the CRA regulators clarify that a community benefits plan is just one tool for demonstrating how a bank will meet the convenience and needs of the community, but that it is not required.
- Treasury recommends that CRA regulations be amended to allow banks to store the public file electronically on the bank's website.
- Treasury recommends that community development loans receive the same annual consideration as community development investments. Longer term loans allow qualified entities to better match capital with the needs of the community. This recommendation could facilitate more capital for CDFIs and encourage more Small Business Administration lending to small businesses.
- Treasury recommends that the CRA regulators evaluate their approach to affiliates in order to ensure that performance evaluations accurately reflect the CRA-eligible activity of the overall bank.
- Treasury encourages the CRA regulators to review CCAR treatment for PWIs, including consideration of whether current capital standards are reflective of the actual performance of all PWIs, and whether the PWI category should be broken out into subcategories where capital standards could be more appropriately measured and reflected.
- Treasury encourages the CRA regulators to continue to monitor the impact of the emergence of nonbanks on the effectiveness of CRA.

### Upcoming Hearings and Events

#### April 9

***Fixed Income Market Structure Advisory Committee:*** The Securities and Exchange Commission's Fixed Income Market Structure Advisory Committee (FIMSAC) will hold its

second meeting. The meeting agenda includes remarks from Chairman Jay Clayton and Commissioners, and discussion of a Block Trade Dissemination Draft Recommendation, Liquidity Considerations for Bond ETFs, Retail Investor Disclosure and Education, and Electronic Trading in the Retail Market; and discussion of next steps.

#### April 10

***Equity Markets Symposium:*** Securities and Exchange Commission (SEC) Chairman Jay Clayton, SEC Division of Trading and Markets Director Brett Redfearn, Financial Industry Regulatory Authority (FINRA) President and CEO Robert Cook, and other industry members will participate in and give remarks at the University of Chicago Booth School of Business and the Security Traders Association's (STA) Equity Market Symposium, which will be held at the Booth School of Business in Chicago.

#### April 11

***CFPB Oversight:*** The House Financial Services Committee will hold a hearing on the Consumer Financial Protection Bureau (CFPB) annual report. CFPB Acting Director Mick Mulvaney will testify at the hearing.

***Treasury International Programs:*** The House Appropriations Committee's Subcommittee on State, Foreign Operations, and Related Programs will hold a hearing on the Treasury Department's international programs. Treasury Secretary Steven Mnuchin will testify at the hearing.

#### April 12

***CFPB Oversight:*** The Senate Banking Committee will hold a hearing on the CFPB

annual report. CFPB Acting Director Mick Mulvaney will testify at the hearing.

***FSOC Meeting:*** The Financial Stability Oversight Council (FSOC) will meet to discuss: “potential amendments” to the FSOC’s bylaws, “potential amendments to the Council’s interpretive guidance regarding nonbank financial company designations,... a potential application to the Council from a bank holding company or its successor under section 117 of the Dodd-Frank Act, and an update on the annual reevaluation of the designation of a nonbank financial company.”

***FHFA Oversight:*** The House Financial Services Committee’s Subcommittee on Oversight and Investigations will hold a hearing on the “Oversight of the Federal Housing Finance Agency.” FHFA Director Mel Watt is expected to testify.

***CFIUS Reform Legislation:*** The House Financial Services Committee’s Subcommittee on Monetary Policy and Trade will hold a hearing on “H.R. 4311, the Foreign Investment Risk Review Modernization Act of 2017” and issues relating to reform of the Committee on Foreign Investment in the U.S. (CFIUS).

***Department of Labor:*** The Senate Appropriations Committee’s Subcommittee on Labor, Health and Human Services, Education and Related Agencies will hold a hearing on the FY2019 budget request for the Labor Department. Secretary of Labor Alexander Acosta will testify at the hearing.

### **April 13**

***FEMA:*** The House Appropriations Committee’s Subcommittee on Homeland Security will hold a hearing on the Federal Emergency Management Agency (FEMA).

FEMA Administrator Brock Long will testify at the hearing.

### **April 17**

***Federal Reserve Oversight:*** The House Financial Services Committee will hold a hearing on “the efforts, activities, objectives, and plans of the Federal Reserve with respect to the conduct of supervision and regulation of depository institution holding companies and other financial firms supervised by the Federal Reserve.” Randal Quarles, Vice Chairman for Supervision, Board of Governors of the Federal Reserve System, will testify.

***Nomination Hearing:*** The Senate Banking Committee will hold a hearing to discuss the nominations of: Mr. Jeffery Nadaner, to be Assistant Secretary of Commerce for Export Enforcement; the Honorable Thelma Drake, to be Federal Transit Administrator, Department of Transportation; and Mr. Seth Daniel Appleton, to be Assistant Secretary of Housing and Urban Development for Policy Development & Research.

### **April 19**

***Federal Reserve Oversight:*** The Senate Banking Committee will hold a hearing on “The Semiannual Testimony of the Federal Reserve’s Supervision and Regulation of the Financial System.”

*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

### **CMS Finalizes Policies for Medicare Plans for 2019**

#### *Key Points:*

- *The Centers for Medicare and Medicaid Services published final policies for Medicare health and drug plans for 2019.*
- *The final policy includes provisions to address prescription drug costs, the opioid epidemic, and Medicare Advantage.*

On April 2, the Centers for Medicare and Medicaid Services (CMS) announced the finalized policy change and updates to Medicare Advantage (MA) and the prescription drug benefit program for 2019. Administrator Seema Verma said “the Trump Administration is taking steps for seniors with Medicare to save money on prescription drugs” emphasizing these steps “will drive more competition among plans and pharmacies to meet the needs of seniors and lower costs.”

For MA, the final rule codifies aspects of the Medicare Part C and Part D Star Ratings including the principles for adding, updating, and removing measures and the methodology for weighting measures. CMS also included new rules for Star Ratings when contracts consolidate and new methods for applying scaled reductions. The final rule eliminates the requirements that MA plans offered by the same organization in the same country comply with unnecessary limits require differences among the organizations plans. CMS noted concerns the requirement results in organizations reducing the value of certain benefit offerings to make plans comply with unnecessary limits.

CMS also finalizes steps to implement the Comprehensive Addiction and Recovery Act (CARA). The rule implements changes in the

regulations to allow Part D sponsors to implement drug management programs which can help limit at-risk beneficiary access to coverage for frequently abused drugs. Opioids and benzodiazepines will be designated as frequently abused. These programs will be integrated with the existing Overutilization Monitoring System. Sponsors will be able to limit an at-risk beneficiary’s access to a selected prescriber and/or pharmacy after engaging in case management with the prescribers. Beneficiaries can submit prescriber and pharmacy preferences. There will be an exemption for beneficiaries being treated for active cancer-related pain; palliative care, end-of-life, or hospice care; or long-term care from drug management programs.

To address prescription drug costs, CMS revised the maximum out-of-pocket limits to enable it to make further changes and provide flexibility to encourage plan options with lower out-of-pocket limits. The discriminatory cost sharing standards will be updated to use a new standard beginning no earlier than 2020. CMS also revises policies related to tiering including eliminating the provision allowing plans to exclude a dedicated generic tier from the tiering exceptions process. The final rule clarifies the Part D rules regarding the any willing pharmacy provisions and revises the definition of a retail pharmacy. The rule encourages further use of lower-cost alternatives by applying generic cost-sharing to biosimilar products for low-income subsidy Part D enrollees through all phases of the benefit.

Read the final rule [here](#).

## Senate HELP and House Energy and Commerce to Hold Opioid Hearings

### Key Points:

- *House Energy and Commerce Committee will hold an opioid hearing dedicated to Medicare and Medicaid coverage issues.*
- *Senate HELP Committee will hold a hearing focused on the Opioid Crisis Response Act of 2018.*

On April 11, the Senate Health, Education, Labor and Pensions (HELP) Committee and the House Energy and Commerce Committee's Subcommittee on Health will hold hearings to examine possible solutions to the opioid crisis. The Energy and Commerce Committee hearing marks the third legislative hearing in a series dedicated to combating the crisis. The hearing entitled "Combating the Opioid Crisis: Improving the Ability of Medicare and Medicaid to Provide Care For Patients" will explore opioid matters in Medicare and Medicaid and bills related to payment and coverage issues.

The Senate HELP Committee hearing will focus on recently released draft legislation entitled the Opioid Crisis Response Act of 2018. The discussion draft includes measures to encourage responsible prescribing behavior and updates to the funding formula authorized by the 21st Century Cures Act. The draft legislation is a result of six hearings held by the Senate HELP Committee on the opioid crisis which featured testimonies from the Food and Drug Administration, National Institutes of Health, Substance Abuse and Mental Health Services Administration, and governors.

## Upcoming Hearings and Meetings

### April 10

**Fentanyl:** The Partnership for Safe Medicines will hold a briefing on "The Latest Threats Posed by Illegally-Imported Fentanyl."

### April 11

**Opioids:** The Senate Health, Education, Labor and Pensions Committee will hold a hearing on "The Opioid Crisis Response Act of 2018."

**Opioids:** The House Oversight and Government Reform Committee will hold a hearing on "Local Responses and Resources to Curtail the Opioid Epidemic."

**Opioids:** The House Energy and Commerce Committee will hold a hearing on "Combating the Opioid Crisis: Improving the Ability of Medicare and Medicaid to Provide Care for Patients."

**Fentanyl:** The Senate Judiciary Committee will hold a hearing on "Defeating Fentanyl: Addressing the Deadliest Drugs Fueling the Opioid Crisis."

### April 12

**Rural Health:** The House Appropriations Committee will hold a hearing on "Investments in our Health Workforce and Rural Communities."

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

**TRADE****U.S. and China Escalate Trade Dispute, Increase Tariffs***Key Points:*

- *The U.S. Trade Representative (USTR) recommended 25 percent tariffs on \$50 billion of Chinese goods.*
- *On Monday, China implemented tariffs on [128 U.S. products](#), with a 15 percent tax on 120 assorted goods and a 25 percent tax on aluminum scrap and pork. Future tariffs could also be placed on soybeans, aircraft, and automobiles.*
- *President Trump then threatened to impose tariffs on an additional \$100 billion of Chinese goods.*

The U.S. and China have continued to escalate trade tensions since President Trump announced he would be implementing 25 percent tariffs on \$50 billion of Chinese goods as the result of a Section 301 investigation into Chinese intellectual property (IP) and technology transfer policies. As a result of this announcement, China chose to levy 15 percent tariffs on fruits and steel products, amongst other goods. China also implemented a 25 percent tariff on pork products and aluminum scrap. Next, China announced it was considering implementing tariffs on 106 U.S. products, including soybeans, aircraft, and automobiles; all industries that rely on exporting to China. The Chinese government has not announced when it intends to implement these tariffs and has said they will impose them following any additional U.S. tariffs. Most recently, President Trump “instructed the USTR to consider whether \$100 billion in additional tariffs would be appropriate under Section 301 and, if so, to identify the products upon which to impose such tariffs.” USTR Lighthizer argued that “China has chosen to respond thus far

with threats to impose unjustified tariffs on billions of dollars in U.S. exports, including our agricultural products. Such measures would undoubtedly cause further harm to American workers, farmers, and businesses.” The Administration has said they are waiting until after the May 15 public hearing and May 22 public comment deadline before implementing the first round of 301 tariffs.

China has also begun to take action at the World Trade Organization (WTO), initiating a dispute with the U.S. and calling the proposed tariffs a “gross violation” of WTO principles. They argue that the tariffs on high-tech products violate the most-favored nation principle, do not meet WTO dispute settlement proceedings, and would lead the U.S. to exceed its bound tariffs rate. Specifically, the request alleges that the 301 tariffs would violate “Articles I.1 and II.1(a) and (b) of the General Agreement on Tariffs and Trade as well as Article 23 of the Dispute Settlement Understanding.” The U.S. has until April 14 to reply to China’s consultation request and must begin consultations within 30 days. If they are unable to solve the problems through consultations, China may request a panel. U.S. representatives have asserted that the 301 investigation did not consider whether China violated WTO commitments, allowing the U.S. to take unilateral action without violating WTO rules. China also announced that it would be suspending tariff concessions equal to the amount of trade affected by U.S. safeguards on imports of solar products and residential washers.

**NAFTA Negotiators Continue Crafting New Rules of Origin Provision***Key Points:*

- *The three countries are working on a “focused value” idea that would rank automobile*

*components based on their importance to a vehicle.*

- *U.S. Trade Representative (USTR) Lighthizer continues to push for 85 percent regional value content.*

After the U.S. Trade Representative's (USTR) original automobile rules of origin proposal was soundly rejected by Canada and Mexico, the three parties began working on a "focused regional value content" provision that was first proposed by Canada. USTR Lighthizer reportedly withdrew his 50 percent U.S. content requirement but added new proposals that would factor wages into regional value content and address steel and aluminum production. According to reports, USTR is offering 'credit' of up to 25 percent that would be counted toward a part's 85 percent regional value content if the component is made by workers earning a wage of at least \$15 per hour. This could cause cheaper production to move to Asia while high-cost production would shift to the U.S. It has been reported that Canada was receptive to the wage idea but strongly opposed to the 85 percent regional value content requirement. The Mexican government and auto industry have not agreed on how to approach USTR's wage demands.

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

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