



January 10, 2020

# Washington Update

## This Week In Congress

**House** – The House passed [H.R. 2881](#), “The Secure 5G and Beyond Act,” [H.R. 535](#), “The PFAS Action Act,” and [H. Con. Res. 83](#), a resolution directing the President to cease military action against Iran unless authorized by Congress or in response to an imminent threat.

**Senate** – The Senate confirmed the nomination of Jovita Carranza to be Administrator of the Small Business Administration, as well as several judicial, ambassadorial, and federal agency nominations.

## Next Week In Congress

**House** – Speaker Pelosi has announced that the House will transmit the articles of impeachment against President Trump to the Senate next week. The House is expected to consider [H.J.Res. 76](#), which would provide for Congressional disapproval of the Department of Education’s rule on “Borrower Defense Institutional Accountability,” and [H.R. 1230](#), “The Protecting Older Workers Against Discrimination Act.”

**Senate** – The Senate may begin the trial in the impeachment of President Trump. Limited legislative activity is likely to occur during the trial, as measures can only be passed by unanimous consent. Prior to commencement of the trial, the Senate is expected to continue work on confirming pending nominees, including Peter Gaynor to be Administrator of the Federal Emergency Management Agency (FEMA). The Senate is unlikely to vote on the U.S.-Mexico-Canada Agreement (USMCA) next week.

## TAX

### House Democrats Ask the IRS to Expedite the Non-Profit Tax Refund Process

*Key Points:*

- *House Ways and Committee Chairman Neal (D-MA) and House Oversight Committee Chairman John Lewis (D-GA) sent a letter to the IRS requesting an expedited process for tax-exempt organizations to receive refunds for the unrelated business income tax (UBIT) paid on employees parking and transportation benefits.*

On January 8, House Ways and Means Committee Chairman Neal (D-MA) and House Oversight Committee Chairman Lewis (D-GA) sent a [letter](#) to IRS Commissioner Rettig. The letter requested the agency to establish an expedited process for tax-exempt organizations

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to obtain refunds of unrelated business income tax (UBIT) paid on employees parking and transportation benefits.

In December, Congress repealed a measure in the 2017 Tax Cut and Jobs Act that required non-profits such as churches to pay a 21% tax on parking and transportation benefits provided to their employees. The lawmakers are seeking an expedited and easier means for qualifying organizations to begin receiving their refunds.

### **Bipartisan Clean Energy Innovation Tax Credit Act Introduced**

#### *Key Points:*

- *On January 8, a bipartisan group of lawmakers introduced the Innovation Credit Act ([H.R. 5523](#)).*
- *The legislation is designed to work in concert with existing energy tax credits by providing a technology neutral credit tax credit and is expected to encourage clean energy investments and drive innovation.*

On Wednesday, a group of bipartisan lawmakers led by House Ways and Means Committee members Reed (R-NY), Suozzi (D-NY), and Panetta (D-CA), as well as Representative Gottheimer (D-NJ), introduced the Energy Sector Innovation Credit Act, ([H.R. 5223](#)). The legislation's intent is to encourage clean energy investments by providing a technology neutral tax credit.

The legislation is designed to work concurrently with existing energy tax credits and will prohibit companies from benefitting from the energy sector innovation credit while using other energy-related investment or production tax credits. In addition to encouraging energy innovation and deployment, the bill provides a separate credit for energy storage technologies and a provision that would end the credit once a technology proves commercially viable.

Congressman Reed plans to continue discussions with his colleagues in the House and Senate, in hopes of gaining support for the bill and possibly making it bicameral.

### **House Democrats Continue Push for Expanded Refundable Tax Credits in Exchange for the Qualified Improvement Property Technical Correction**

#### *Key Points:*

- *House Democrats began their 2020 push to expand refundable tax credits in exchange for correcting the qualified improvement property provision of the Tax Cut and Jobs Act.*
- *House and Senate Republicans are doubtful the exchange is reasonable, and a middle ground on the issue has proved elusive to date.*

House Democrats are planning to continue their efforts to expand refundable child tax credits in exchange for enacting the qualified improvement property technical correction, also known as the “retail glitch.” Democrats and Republicans were unable to find an acceptable middle ground on the issue during the December spending package negotiations. This week, House Ways and Means Committee Chairman Neal (D-MA) said he will continue using this negotiating approach in 2020, because it is an issue that impacts taxpayers in Republican and Democratic districts.

Senate Finance Committee Chairman Grassley (R-IA) remains doubtful that correcting the qualified improvement property provision will pass if connected to the expansion of refundable tax credits, despite being a priority for Senate Republicans. House Ways and Means Committee Ranking Member Brady (R-TX) similarly rejected the idea that Republicans would accept expanding the refundable tax credits, even if Democrats are willing to correct the qualified improvement property provision. He said the bill suggested by the Democrats

[\(H.R. 1869\)](#) would cost over \$100 billion, while “fixing the glitch would cost nothing and has widespread bipartisan support.”

It is not expected that House Democrats will change their approach. Chairman Neal has suggested he will seek a floor vote on legislation sometime in the coming months that will expand the refundable child credit, as well as the earned income tax credit.

### Senate Republicans Unlikely to Consider Bill Providing Temporary Relief from the SALT Cap

#### Key Points:

- *Chairman Grassley indicated the Senate Finance Committee will not consider H.R. 5377, which would provide a temporary repeal of the \$10,000 cap on the state and local tax (SALT) deduction.*

Senate Finance Committee Chairman Grassley (R-IA) said the Senate will not consider [H.R. 5377](#), which was approved by the House at the end of 2019. He said any attempt to repeal the \$10,000 cap on the state and local tax (SALT) deduction would undermine the Tax Cut and Jobs Act (TCJA). The bill would also raise top individual tax rates and adjust tax brackets to offset the temporary SALT relief, making it an even more unlikely to receive Republican support in the Senate.

The bill, as a result, is more of a political statement by House Democrats than a real legislative vehicle that has a chance of enactment.

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

## FINANCIAL SERVICES

### SEC Issues Proposed Order on Equity Market Data

#### Key Points:

- *The SEC issued a proposed order to require the SROs to create a single NMS plan to govern the public dissemination of real-time consolidated market data.*
- *Commissioners Robert Jackson and Allison Herren Lee voted against the proposal, arguing that it does not do enough to address conflicts of interest.*

On January 8, the Securities and Exchange Commission (SEC) held an [open meeting](#) and approved a “[Proposed Order](#) Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data.”

Chairman Jay Clayton, in a [statement](#), said the proposed order would require the self-regulatory organizations (SROs) to propose a new National Market System (NMS) plan to govern the public dissemination of real-time consolidated market data for NMS stocks. He noted that in a July 2017 speech he identified market structure as an area of focus for the SEC and its staff. He stated that there is currently a tiered system of market data access in the U.S. equity markets. He noted that over the past 20 years an array of proprietary data products have been introduced, with the demand for more sophisticated data products increasing. Clayton stated that market participants have demanded data products with lower latency and more information than what is in the consolidated market data streams. He asserted that the gap in speed and sophistication between the consolidated data streams and the proprietary products has grown in recent years. He suggested that this gap may hurt those who

cannot access proprietary data products. He said it is clear developments in technology have profoundly shifted the market. He noted that most exchanges have converted to demutualized entities owned by shareholders, and market data has become a component of the business operations of many exchanges. He stated that participants have raised concerns that these developments have led to conflicts of interests between exchanges' business models and their regulatory obligations. Clayton said the Division recommends that the SEC issue a proposed order directing the SROs to create a single NMS plan known as the New Consolidated Data Plan. He said the proposed order sets forth questions around issues with the current plan structure, issues with the current governance structure, and governance provisions which would allow the new plan to address those issues. He said the New Consolidated Data Plan would result in a significant change in the regulation and dissemination of equity market data.

Brett Redfearn (Director, Division of Trading and Markets) said the New Consolidated Data Plan would replace the current plans and create a different plan structure. He stated that the current governance model for market data was created in the 1970s, but there have been major changes in the marketplace. He stated that the three NMS plans have one operating committee and one advisory committee, but still exist as separate plans. He said the proposed order would create a single plan for consolidated market data. Redfearn said improvement to the securities information processors (SIPs) has been inhibited by the SROs' business models which focus on proprietary market data products. He said the equity data plans have failed to ensure the SIPs keep pace with proprietary data feeds, either on price or speed. He stated that the staff's position was informed by significant public comment. He said the New Consolidated Data Plan would have a

significantly different governance structure than the current plans.

Michael Coe (Associate Director, Office of Market Supervision, Division of Trading Markets) said the proposed order would provide operating committee votes to individuals representing non-SROs, including a vote for an institutional investor, retail broker, institutional broker, market data vendor, issuer and retail investor. He noted that the SRO voting rights would change, with one vote per exchange group unless the exchange group has at least 15% market share, which in that case the exchange group would have two votes. He noted that one-third of the votes on the operating committee would be allocated to non-SRO members. He said the order would provide that the Plan should designate specific duties for the operating committee. He said the New Consolidated Data Plan would be required to implement provisions to address conflicts of interest for SRO and non-SRO plan members. He said the proposed order would be subject to a 45-day comment period.

Commissioner Robert Jackson and Commissioner Allison Herren Lee opposed the proposed order, arguing that while there is a conflict which needs to be addressed the proposal does not take the correct approach. Jackson said the proposed order "chooses hope over experience" and asks the exchanges to act against their own interests. He suggested that the proposal would benefit lobbyists and lawyers, but not investors. He criticized the proposal for using NMS plans rather than SEC regulation, pointing to the issues and delays with the Consolidated Audit Trail (CAT). He said the law should be addressed to change the incentives given to the exchanges, rather than expecting the exchanges to act contrary to their own financial interests. Lee asserted that the success of any proposal will depend on the strength of the governance structure. She said

she could not support the proposed order, as it does not adequately safeguard the public interest. She said the proposed order would give non-SRO voting members one third of the voting power on the plan but would still not allow for adequate reform.

## Upcoming Hearings and Meetings

### January 14

***Asset Management Advisory Committee:*** The SEC will hold the first public meeting of its Asset Management Advisory Committee.

***Homelessness:*** The House Financial Services Committee will hold a hearing entitled “On the Brink of Homelessness: How the Affordable Housing Crisis and the Gentrification of America Is Leaving Families Vulnerable.”

***Community Reinvestment Act:*** The House Financial Services Committee’s Subcommittee on Consumer Protection and Financial Institutions will hold a hearing entitled “The Community Reinvestment Act: Reviewing Who Wins and Who Loses with Comptroller Otting’s Proposal.”

### January 15

***Terrorism Financing:*** The House Financial Services Committee’s Subcommittee on National Security, International Development, and Monetary Policy will hold a hearing entitled “A Persistent and Evolving Threat: An Examination of the Financing of Domestic Terrorism and Extremism.”

***Accounting:*** The House Financial Services Committee’s Subcommittee on Investor Protection, Entrepreneurship and Capital Markets will hold a hearing entitled “Overseeing the Standard Setters: An Examination of the

Financial Accounting Standards Board and the Public Company Accounting Oversight Board.”

### January 24

***Investor Advisory Committee:*** The SEC will hold a telephonic meeting of its Investor Advisory Committee. The meeting will include discussion and possibly recommendations on two subjects: (1) SEC’s Proxy Voting Advice and Rule 14a-8 Proposed Rulemakings; and (2) Exchange Rebate Tier Disclosure.

### January 29

***Community Reinvestment Act:*** The House Financial Services Committee will hold a hearing entitled “The Community Reinvestment Act: Is the OCC Undermining the Law’s Purpose and Intent?”

### January 30

***Debt Traps:*** The House Financial Services Committee will hold a hearing entitled “Rent-A-Bank Schemes and New Debt Traps: Assessing Efforts to Evade State Consumer Protections and Interest Rate Caps.”

***Insurance:*** The House Financial Services Committee’s Subcommittee on Housing, Community Development and Insurance will hold a hearing entitled “Examining the Availability of Insurance for Nonprofits.”

### January 31

***Mobile Payments:*** The House Financial Services Committee’s Task Force on Financial Technology will hold a hearing entitled “Is Cash Still King? Reviewing the Rise of Mobile Payments.”

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

**ENERGY & ENVIRONMENT****House Democrats Unveil Climate Framework***Key Points:*

- *House Energy and Commerce Committee Democrats released the outline of a wide-ranging bill that would mandate the reduction of greenhouse gas emissions to “net-zero” by 2050.*
- *The Committee plans to release the text of the legislation later in January and hold hearings on the proposal over the next several months.*

On January 8, House Energy and Commerce Committee Chairman Frank Pallone (D-NJ), Environment and Climate Change Subcommittee Chairman Paul Tonko (D-NY), and Energy Subcommittee Chairman Bobby L. Rush (D-IL) released the “[framework](#)” of the “Climate Leadership and Environmental Action for our Nation’s (CLEAN) Future Act”. The framework is a 15-page description of draft legislation that the Committee expects to release later in January.

The Clean Future Act would establish the goal of achieving “net-zero” greenhouse gas (GHG) emissions by 2050. The proposal “directs federal agencies to use all existing authorities to put the United States on a path toward meeting the net-zero emissions target.” The framework also describes provisions that would:

- Establish a Clean Energy Standard, which would require retail electricity suppliers to “provide an increasing supply of clean energy to consumers starting in 2022, rising to 100 percent clean energy by 2050.”
- Direct the Federal Energy Regulatory Commission (FERC) “to consider climate change as part of its public interest determination under the Natural Gas Act”.

- Authorize “grants for grid modernization, resilience, and storage”.
- Establish “national energy savings targets for continued improvement of model building codes, leading to a requirement for zero-energy ready buildings by 2050.”
- Require the Environmental Protection Agency (EPA) “to set new, increasingly stringent greenhouse gas emission standards for light-, medium-, and heavy-duty vehicles, including non-road modes of transportation...in accordance with the path to net-zero emissions by 2050.”
- Establish the “Buy Clean Program”, which will set “performance targets to steadily reduce emissions from construction materials and products used in projects that receive federal funding.”
- Require the “EPA to regulate methane emissions from the oil and gas sector”, requiring existing sources to “reduce emissions 65 percent below 2012 levels by 2025 and 90 percent below 2012 levels by 2030.”
- Require the EPA “to address emissions from liquefied natural gas facilities and offshore oil and gas operations.”
- Authorize funding to “the states to accelerate natural gas distribution companies’ efforts to inspect, repair, or replace aging pipeline infrastructure.”
- Set “a national climate standard of net-zero GHG emissions in each state by 2050”.
- Establish a “National Climate Bank” that would “mobilize public and private investment to provide financing for low- and zero-emissions energy technologies; climate resiliency; building efficiency and electrification; industrial decarbonization; grid modernization;

agriculture projects; and clean transportation.”

- Authorize workforce development programs.
- Require that federal agencies “consider the impacts of climate change when developing relevant national security policies.”

The framework outlines the Committee’s process for soliciting input on the legislation, which will include hearings and “ongoing stakeholder engagement.”

In announcing the framework, Chairman Pallone declared that it “represents our commitment to achieving net-zero greenhouse gas pollution.” Chairman Tonko stated that the proposal “will be the top priority for my Subcommittee this year.”

In a [statement](#), House Energy and Commerce Committee Ranking Member Greg Walden (R-OR) expressed opposition to the proposal, asserting that if the Committee’s “Democrats were serious about getting something done on climate change, they would seek to make law instead of engaging in partisan messaging exercises.”

## Upcoming Hearings and Events

### January 14

**Hydrofluorocarbons:** The House Energy and Commerce Committee’s Environment and Climate Change Subcommittee will hold a [hearing](#) on “Promoting American Innovation and Jobs: Legislation to Phase Down Hydrofluorocarbons”. The hearing will include discussion on the “American Innovation and Manufacturing Leadership Act of 2020” ([H.R. 5544](#)), legislation that would support the “manufacture of next generation technologies, including refrigerants, solvents, fire

suppressants, foam blowing agents, aerosols, and propellants”. As described in a [press release](#), H.R. 5544 would also:

- Direct a phase-down of “production and consumption of hydrofluorocarbons (HFCs) by 85 percent over 15 years”
- Require “the Environmental Protection Agency (EPA) to implement an allowance allocation and trading program to do so, and to establish standards governing the management of HFCs used as refrigerants, including to recover and reclaim used HFCs”; and
- Authorize the “EPA to establish schedules for specific sectors to transition to next-generation technologies.”

**Maritime Industry and Greenhouse Gas Emissions:** The House Transportation and Infrastructure Committee’s Coast Guard and Maritime Transportation Subcommittee will hold a [hearing](#) titled “The Path to a Carbon-Free Maritime Industry: Investments and Innovation”.

### January 15

**Nuclear Energy:** The Senate Environment and Public Works Committee will hold a hearing titled “One Year of Progress: An Update on Implementation of the Nuclear Energy Innovation and Modernization Act”.

### January 23

**FERC Open Meeting:** The Federal Energy Regulatory Commission (FERC) will hold its monthly [open meeting](#).

### January 29

**Energy Outlook:** The Bipartisan Policy Center will host an [event](#) for the release of the Energy

Information Administration's (EIA) Annual Energy Outlook. The program includes "a presentation by EIA Administrator Dr. Linda Capuano followed by a panel discussion on the challenges and market trends facing the electricity sector."

## **February 19-20, 2020**

### ***Pipeline Safety Research and Development:***

The Pipeline and Hazardous Materials Safety Administration (PHMSA) will hold a "[Pipeline Safety Research and Development Forum](#)". The forum will allow "the public, government and industry pipeline stakeholders to develop recommendations on the technical gaps and challenges for future pipeline safety research."

For more information about energy and environment issues you may [email](#) or call Frank Vlossak at 202-659-8201. Updates on energy and environment issues are also available on [twitter](#).

## **HEALTH**

### **Upcoming Hearings and Meetings**

#### **January 14**

***Opioids:*** The House Energy and Commerce Committee will hold a hearing on "A Public Health Emergency: State Efforts to Curb the Opioid Crisis."

#### **January 15**

***Cannabis:*** The House Energy and Commerce Committee will hold a hearing on "Cannabis Policies for the New Decade."

***Addiction:*** The Cato Institute will hold a briefing on "Needle Exchange Programs: Benefits and Challenges."

## **January 16-17**

***Medicare:*** The Medicare Payment Advisory Commission will hold a public meeting.

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

## **TRADE**

### **U.S.-China Expected to Sign Phase One Deal Next Week**

#### ***Key Points:***

- *A Chinese delegation will be in Washington, DC next week to sign Phase One of a trade deal on January 15.*
- *Phase Two negotiations could begin thereafter, but are not expected to conclude before the election, and a lot of difficult negotiating points remain on the table.*

China's Ministry of Commerce on Thursday announced that Vice Premier Liu He would lead a delegation to Washington, DC from January 13-15 for the signing of a "Phase One" trade deal. The deal is expected to see China significantly boost purchases of U.S. agricultural products in exchange for the U.S. scaling back some of its existing tariffs on Chinese products (List 4A) and forestalling or cancelling additional tariffs under List 4B that were planned for December 15, 2019. However, China has not confirmed any specific numbers about agricultural product purchases, or tariff reductions needed to make large scale purchases of U.S. agricultural commodities viable. Other reforms to foreign ownership, financial sector and IP practices are potentially included according to USTR, but details of those provisions remain vague so far.

While the exact language of the Phase One deal may be released next week, past practice by the



USTR and White House has been to delay the release of the language of executive agreements, so the details may not be known immediately.

Ministry of Commerce spokesperson Gao Feng has been very vague about any details on the timing of Phase Two of the agreement. The White House has suggested Phase Two talks could take all of 2020 to complete, acknowledging the issues are difficult. President Trump is expected to travel to Beijing to formally kick off Phase Two discussions sometime in the relatively near future. Phase Two talks will be even more difficult than the Phase One deal because the next stage of negotiations will involve structural issues concerning China's economy that require deeper reforms from Beijing, including changes to industrial policies, subsidies and higher-level opening-up — all of which were much more difficult for Beijing and Washington to achieve a consensus on.

## Brexit and EU Negotiations Update

### Key Points:

- *The Brexit deadline is set for January 31, after which trade negotiations with the U.S. can begin.*
- *Many U.S. lawmakers would like a deal with the UK, but if the UK makes a deal with the EU first or at the same time, it could make negotiations more difficult for U.S. trade representatives.*

On Thursday, final approval of a Brexit withdrawal bill was given by the British Parliament. The bill sets a deadline of January 31 for the UK to exit the EU. After the deadline the U.S. can begin trade negotiations with the UK. The bill codifies an 11-month transition period for the UK to secure a trade deal with the EU and, potentially, one with the U.S. as well. During the transition, the UK will remain aligned with EU rules. The U.S. will be able to

negotiate, although likely not sign, a trade agreement with the UK during that time.

U.S. Republican lawmakers are enthusiastic about the possibility of a U.S.-UK trade deal, with Senate Finance Committee Chairman Grassley (R-IA) calling it a top priority for his committee once the U.S.-Mexico-Canada Agreement (USMCA) is passed. Democrats have been more cautious about a deal, arguing that it would be better to wait until after UK-EU negotiations. However, if the UK and EU seek to reach a comprehensive trade deal that will make a deal between the UK and U.S. more difficult because, for example, the EU is certain not to allow agricultural imports from the U.S. that don't meet EU standards to transship through the UK into the EU. As a result, there will be a delicate dance for the remainder of the year as potentially both an EU-UK deal and U.S.-UK deal could be negotiated simultaneously, while impacting each other.

For the purposes of comparison and scale, more than half of UK imports come from the EU compared to 7.5% from the U.S.; and the UK exports about six times more goods to the EU than U.S. — so the UK trade relationship with the EU is much larger than with the U.S.

## USMCA Senate Markups Continue Next Week, Final Senate Vote Likely Delayed Until After Impeachment trial

### Key Points:

- *The Senate is unlikely to vote on USMCA next week, due to procedural delays, but Republican leadership is still very optimistic about its quick passage.*
- *Timing of the Senate impeachment trial could also delay a vote on the USMCA.*

Senate Finance Committee Chairman Grassley (R-IA) said Thursday that the Senate is unlikely to vote on the USMCA next week because

several committees have yet to review the deal. Typically, the Finance Committee has the sole jurisdiction on trade matters, however the enacting legislation for USMCA was also jointly referred to several other committees by the Parliamentarian in the Senate, to mirror what was done originally on NAFTA and in the House on the USMCA bill. As a result, there will be markups in several other committees in the Senate on the narrow aspects of USMCA that fall under their purview. The legislation cannot be amended under Trade Promotion Authority (TPA), so this is more of an additional procedural step than anything else.

The Senate Budget and Environment and Public Works committees will both vote Tuesday on the trade pact, while the Commerce and the HELP committees will take up the agreement Wednesday. The Foreign Relations Committee will vote Thursday on the pact. And a sixth panel, the Appropriations Committee, also plans to markup the trade deal, but hasn't yet set a date.

Senate Majority Leader McConnell (R-KY) has said an impeachment trial could delay a vote on the trade deal. Chairman Grassley has noted that undertaking regular business during an impeachment trial requires unanimous consent at the beginning of each day the trial is in session. House Speaker Pelosi (D-CA) announced Friday that she intends to send the articles of impeachment to the Senate next week.

## Upcoming Hearings and Meetings

### January 14

**USMCA:** The Senate Environment and Public Works Committee and the Senate Budget Committee will hold markups of the United States-Mexico-Canada Agreement Implementation Act ([H.R.5430](#)).

### January 15

**USMCA:** The Senate Health, Education, Labor and Pensions Committee, and the Senate Commerce, Science, and Transportation Committee will hold markups of the United States-Mexico-Canada Agreement Implementation Act ([H.R.5430](#)).

### January 16

**USMCA:** The Senate Foreign Relations Committee will hold a markup of the United States-Mexico-Canada Agreement Implementation Act ([H.R.5430](#)).

*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.*