

January 17, 2020

## Washington Update

### This Week In Congress

**House** – The House voted to appoint managers and transmit the articles of impeachment against President Trump to the Senate. The House passed [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 members of the Senate were sworn in as jurors in the impeachment trial of President Trump. The Senate passed [H.R. 5430](#), the implementing bill for the U.S.-Mexico-Canada Agreement (USMCA), which will now go to the President for his signature. The Senate confirmed the nomination of Peter Gaynor to be Administrator of the Federal Emergency Management Agency (FEMA).

### Next Week In Congress

**House** – The House will be in recess.

**Senate** – The Senate is scheduled to begin the trial in the impeachment of President Trump on Tuesday. Limited legislative activity is likely to occur during the trial.

## TAX

### **House Democrats to Release Infrastructure Plan**

#### *Key Points:*

- *House Democrats are expected to release a wide-ranging infrastructure plan when the House returns from recess.*
- *While Democrats and Republicans agree on the need for infrastructure investment, they face major challenges in reaching an agreement on how to fund it.*

On January 16, Speaker Pelosi (D-CA) said she hopes to release the House Democrat’s infrastructure plan when the House reconvenes the week of January 27.

House Democrats indicated last year that they hoped to pass a \$1 trillion infrastructure package covering a wide range of matters, including surface transportation, water resources, pipeline safety, and broadband resources. Speaker Pelosi said this week that she thought House Democrats “would be able to move in a positive way on this” with the White House, given President Trump’s statements on infrastructure during the 2016 campaign.

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While there is agreement between the parties on the need for an infrastructure package, they will face significant challenges in reaching consensus on how to fund it. House Transportation and Infrastructure Chairman DeFazio (D-OR) has proposed supplementing existing federal gas tax revenues with a bonding proposal. The Senate has examined measures to increase gas tax revenues, such as indexing the tax to inflation or taxing electric vehicles, but proposals viewed as increasing the gas tax may be politically unpopular.

Any infrastructure package is unlikely to cross the finish line without a bipartisan approach and cooperation and support from the White House. Given the previous failures to reach an agreement the House Democrat plan may be more of a messaging tool than an actual legislative vehicle.

### **CBO to Release Updated Budget and Economic Outlook**

#### *Key Points:*

- *The Congressional Budget Office (CBO) will release an update Budget and Economic Outlook on January 28.*
- *CBO's previous Outlook projected that deficits would fluctuate between 4.4 and 4.8 percent of gross domestic product (GDP) between 2020 and 2029.*

The CBO is set to release its annual Budget and Economic Outlook at 2:00 P.M. (EST) on Tuesday, January 28. The report includes updated economic and budget projections for 2020 through 2030.

The CBO's most recent [Outlook](#) was released in August 2019, which estimated the budget deficit for 2019 at \$960 billion. It also projected an average annual deficit of \$1.2 trillion from 2020 to 2029, which depending on adjustments and the timing of payments would fluctuate between

4.4 and 4.8 percent of GDP. These figures represented an increase from the previous [Outlook](#) in May 2019, most of which was attributed to the Bipartisan Budget Act of 2019. The August Outlook projected inflation-adjusted GDP growth at 2.3 percent in 2019 and pointed to low unemployment and rising wages as primary factors in the estimate. The CBO also predicted that consumer spending and government purchases of goods would grow at a slower pace between 2020 and 2023, causing a lower projected growth of 1.8 percent. GDP growth between 2024 and 2029 was likewise projected at 1.8 percent due to an expected slowdown of labor force expansion.

Earlier this month, the CBO released its [Monthly Budget Review](#) for December 2019, which identified the budget deficit as \$358 billion for the first quarter of Fiscal Year 2020. The CBO attributed much of the increase (approximately \$20 billion) to “shifts in the timing of certain payments.”

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

### **FINANCIAL SERVICES**

#### **House Financial Services Subcommittee Holds Hearing on Domestic Terrorism Financing**

#### *Key Points:*

- *The Subcommittee examined the funding sources utilized by domestic terrorist groups, as well as ways to impede this funding.*
- *Members questioned whether domestic terrorist organizations are utilizing cryptocurrencies to hide their financial activity.*

On January 15, the House Financial Services Committee's Subcommittee on National

Security, International Development and Monetary Policy held a [hearing](#) entitled “A Persistent and Evolving Threat: An Examination of the Financing of Domestic Terrorism and Extremism.”

The Subcommittee examined three bills:

- The Gun Violence Prevention Through Financial Intelligence Act ([H.R. 5132](#)), introduced by Representative Jennifer Wexton (D-VA), which would require the Financial Crimes Enforcement Network (FinCEN) to issue an advisory to financial institutions about how lone actors and other perpetrators of domestic terrorism procure firearms and firearm accessories.
- [Draft bill](#), the Freezing Assets of Suspected Terrorists and Enemy Recruits (FASTER) Act, offered by Representative Josh Gottheimer (D-NJ), which would direct federal law enforcement agencies to notify the FinCEN of an arrest of an individual under suspicion of participating in domestic terrorism or providing material support for terrorism. The bill would direct FinCEN to then order any appropriate financial institution to freeze that individual’s assets.
- [Draft bill](#), “to require the Comptroller General of the United States to carry out a study on the funding of domestic terrorism”.

Chairman Emanuel Cleaver (D-MO) raised concerns with the increasing rate and intensity of domestic terrorist attacks, pointing to attacks in El Paso, Texas and Jersey City, New Jersey. He stated that the Subcommittee should look past the politics of the issue to examine how to disrupt the money supporting these crimes. Ranking Member French Hill (R-AR) said this was the Committee’s first hearing on domestic

terrorism, and that violent extremism is a growing problem in the U.S. He noted that a 2019 report by the Department of Homeland Security (DHS) found that domestic terrorism is as great of a threat to the U.S. as foreign terrorism. Full Committee Chairwoman Maxine Waters (D-CA) said the FBI and DHS have confirmed that domestic extremists are as large of a threat as foreign terrorism. She stated that many different groups have been attacked by “right wing” extremists. She criticized President Trump’s statements regarding “right wing” extremism, particularly following the events in Charlottesville. She stressed the need to cut off the flow of funds to extremist groups.

Representatives Denver Riggleman (R-VA), Juan Vargas (D-CA) and Brad Sherman (D-CA) asked about the extent to which domestic extremists are utilizing cryptocurrencies to fund their operations. Jared Maples (Director, Office of Homeland Security and Preparedness, State of New Jersey) said cryptocurrency is very difficult to track as transfers occur, which makes it harder to deter incidents. He stated that domestic terrorists are aware of the tactics being used by foreign terrorists and the effectiveness of using cryptocurrency. He stated that he expects to see the use of cryptocurrency by domestic extremists increase.

### House Financial Services Subcommittee Holds Hearing on Community Reinvestment Act Reform Proposals

*Key Point:*

- *Democrats criticized the OCC’s Community Reinvestment Act reform proposal, arguing that it does not meet the civil rights intent of the bill.*

On January 14, the House Financial Services Committee’s Subcommittee on Consumer Protection and Financial Services held a [hearing](#) entitled: “The Community Reinvestment Act: Reviewing Who Wins and Who Loses with

Comptroller Otting Proposal .” The hearing focused on the [proposed rule](#) issued by the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) to reform and modernize the Community Reinvestment Act (CRA).

Chairman Gregory Meeks (D-NY) said the CRA was enacted in 1977 to combat the structural discrimination, financial exclusion, and red lining against racial minorities in the U.S. He said any efforts to reform the CRA must remain true to its legacy. He said there is a broad agreement that the CRA needs to be updated to reflect the online banking and fintech space and build on the past twenty-five experience. He shared his disappointment with Commissioner Otting ending the interagency working group to modernize CRA and moving ahead with an approach that was widely panned in comments to the Notice of Proposed Rulemaking. He said the framework put together by the OCC used a simple ratio has been picked apart as inconsistent with the original civil rights intent of CRA. He applauded the Federal Reserve for taking a data-led methodical approach to CRA modernization

Ranking Member Blaine Luetkemeyer (R- MO) stated that the CRA was enacted to ensure banks were properly serving their communities. He said after forty years it is outdated and is not serving its original intent. He said the OCC and FDIC proposed rule to modernize the CRA would provide transparency by requiring regulators to publish a list of pre-approved CRA activities. He said this would allow banks to accurately assess and meet the needs of their communities instead of waiting on an examiner to give results after the fact. He added that because that the Federal Reserve did not join the OCC and FDIC in the rulemaking, it leaves financial institutions with the possibility of a bifurcated rule.

Ranking Member Patrick McHenry (R-NC) applauded the FDIC and OCC on their attempt to update the CRA. He expressed disappointment with the Federal Reserve for not joining with the other agencies in their efforts. He said the proposal takes into the account the changes to the banking industry, including technology.

Following the hearing, Full Committee Chairwoman Maxine Waters (D-CA) announced that the Committee was opening an inquiry into the OCC and the FDIC’s systems and policies for receiving and reviewing comments during the Community Reinvestment Act (CRA) rulemaking process. In a [press release](#), she stated:

The Committee is concerned by reports alleging that certain special interest groups have submitted comments in other rulemakings while posing as consumers, small business owners, and other stakeholders. These fraudulent comments undermine legitimate debate on proposed rules by creating the false appearance that a position has widespread, grassroots support. ...Given the critical importance of CRA to low- and moderate-income communities, the Committee is interested in ensuring any amendments to the CRA are made with full and accurate input from all interested parties.

The full House Financial Services Committee will hold an additional hearing on the CRA proposal on January 29.

## SEC Commissioner Robert Jackson Jr. to Step Down in February

### Key Points:

- *Commissioner Robert Jackson Jr. announced that he will be stepping down on February 14.*
- *SEC staff attorney Caroline Crenshaw may be nominated to replace Jackson.*

This week, it was [announced](#) that Commissioner Robert Jackson Jr. would step down from the Securities and Exchange Commission (SEC) on February 14. Jackson will return to teaching at New York University School of Law. Jackson's term as expired on June 5, 2019, but commissioners are permitted to stay on for an additional 18 months until a replacement is confirmed.

It has been reported that Senate Democrats have asked the White House to name Caroline Crenshaw as Jackson's replacement, but she has not been formally nominated. Crenshaw currently serves as a staff attorney in Jackson's office.

## House Passes Seven Financial Services Bills

### Key Point:

- *The House passed bills dealing with homelessness, insider trading, oversight of regulators, and cybersecurity.*

This week, the House passed seven financial services bills:

- The Homeless Assistance Act ([H.R. 4302](#)), introduced by Representative Brad Sherman (D-CA), which would allow public housing agencies to share client level data with local governments and nonprofit service providers, and help them to identify people who experience homelessness and frequently use multiple services and systems. The bill passed the House by voice vote.

- The 8-K Trading Gap Act ([H.R. 4335](#)), introduced by Representative Carolyn Maloney (D-NY), which would direct the SEC to issue a rule requiring public companies to put in place policies and procedures that are reasonably designed to prohibit officers and directors from trading company stock after the company has determined that a significant corporate event has occurred, and before the company has filed a Form 8-K disclosing such event. The bill passed the House by a vote of 384-7.
- The Prudential Regulators Oversight Act ([H.R. 4841](#)), introduced by Representative Dean Phillips (D-MN), which would require the federal prudential banking regulators to provide annual testimony to the House Financial Services Committee, along with semiannual reports on their supervisory and regulatory activities. The bill passed the House by voice vote.
- The Expanding Opportunities for MDIs Act ([H.R. 5315](#)), introduced by Representative Joyce Beatty (D-OH), which would codify the Department of Treasury's mentor-protégé program to encourage collaboration and partnerships between minority depository institutions (MDIs) and large financial institutions. The bill passed the House by voice vote.
- The Veteran HOUSE Act ([H.R. 2398](#)), introduced by Representative Scott Peters (D-CA), which would expand the eligibility for the Housing and Urban Development-Veterans Affairs Supportive Housing or HUD-VASH program, to veterans experiencing homelessness who have received an "other than honorable" discharge. The bill passed the House by a vote of 362-31.

- The Cybersecurity and Financial System Resilience Act ([H.R. 4458](#)), introduced by Representative Patrick McHenry (R-NC), which would require the Board of Governors of the Federal Reserve System to provide an annual report and briefings to the House Financial Services Committee and Senate Banking Committee on its cybersecurity efforts. The bill passed the House by voice vote.
- The President George H.W. Bush and First Spouse Barbara Bush Coin Act ([S. 457](#)), introduced by Senator John Cornyn (R-TX), which would require the issuance of \$1 coins bearing the image of President George H.W. Bush for a one-year period beginning on January 1, 2019, and bullion coins bearing the image of Barbara Bush during that same period. The bill passed the House by voice vote.

### House Financial Services Subcommittee Holds Oversight Hearing on FASB and the PCAOB

#### *Key Point:*

- *Members of both parties raised concerns with FASB's implementation of the Current Expected Credit Loss (CECL) methodology.*

On January 15, the House Financial Services Committee's Investor Protection, Entrepreneurship and Capital Markets Subcommittee held an oversight [hearing](#) entitled "An Examination of the Financial Accounting Standards Board and the Public Company Accounting Oversight Board." The Subcommittee received testimony from Financial Accounting Standards Board (FASB) Chairman Russell Golden and Public Company Accounting Oversight Board (PCAOB) Chairman William Duhnke.

The hearing focused largely on FASB's implementation of the Current Expected Credit Loss (CECL) methodology. Members of both parties criticized CECL, suggesting that it will adversely affect the cost and availability of credit. Chairman Brad Sherman (D-CA) asserted that all the supposed benefits of CECL could be obtained by providing supplemental disclosures in footnotes. He stated that the decision to impact the basic financial statements poses a "grave danger" to the concept of accounting, as it assumes that the U.S. government should predict future bad events. Ranking Member Bill Huizenga (R-MI) suggested that it would be prudent to impose a moratorium on the implementation of CECL until Congress has a better understanding of the negative impacts on consumer credit. Golden responded that FASB believes CECL should be implemented. Representatives Ann Wagner (R-MO), Vicente Gonzalez (R-TX), Sean Casten (D-IL), Blaine Luetkemeyer (R-MO), Warren Davidson (R-OH), Trey Hollingsworth (R-IN), and Steve Stivers (R-OH) also raised concerns with CECL.

### Judy Shelton and Christopher Waller Announced as Federal Reserve Board Nominees

#### *Key Point:*

- *President Trump announced that he would nominate Judy Shelton and Christopher Waller to fill the vacant positions on the Federal Reserve Board of Governors.*

On January 16, the White House issued a [press release](#) announcing that President Trump intends to make the following nominations:

- Judy Shelton to be a Member of the Board of Governors of the Federal Reserve System for the remainder of a 14-year term expiring January 31, 2024.
- Christopher Waller of Missouri, to be a Member of the Board of Governors of the Federal Reserve System for the

remainder of a 14-year term expiring January 31, 2030.

Shelton most recently served as United States Executive Director of the European Bank for Reconstruction and Development. Waller currently serves as Executive Vice President and Director of Research at the Federal Reserve Bank of St. Louis. If confirmed, Shelton and Waller would fill the two vacant positions on the Federal Reserve Board.

## Upcoming Hearings and Meetings

### January 23

**Small Business Capital Formation:** The SEC Office of the Advocate for Small Business Capital Formation will hold its first “Capital Call” to discuss the state capital raising for smaller companies.

### 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?”

**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 30

**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).

## HEALTH

### House Energy and Commerce Examines Cannabis Policies

#### Key Points:

- *The House Energy and Commerce Committee’s Health Subcommittee held a hearing titled “Cannabis Policies for the New Decade.”*
- *Questions focused on the Schedule I classification of cannabis, the availability of cannabis samples for federal research, and the treatment of commercially available CBD and hemp products.*

On January 15, the House Energy and Commerce Committee’s Health Subcommittee held a [hearing](#) entitled “Cannabis Policies for the New Decade.” Topics discussed in the hearing included: (1) Research; (2) DEA Registration; (3) FDA Approval; (4) Controlled Substance Schedules; (5) Negative Impacts of Use; (6) Law Enforcement/Traffic Risks; (7) Cannabidiol/Hemp Products; (8) Opioids; (9) Vaping/Doses; (10) International Regulations; (11) Provider Education; and (12) State Coverage.

Chairwoman Anna Eshoo (D-CA) started the hearing by describing what she views as a “catch-22” for researchers in which they are prohibited from acquiring cannabis samples before the substance is demonstrated to have medical value and the medical value cannot be demonstrated

before the samples are adequately studied. She called on Congress to remove the restrictions on cannabis research resulting from its status as a Schedule I substance under the Controlled Substances Act (CSA).

Democrats took varying stances on the best way to change federal cannabis policy, with some Members advocating for de-scheduling cannabis as a Schedule I substance and others expressing preference for a more cautious approach. Representative Joe Kennedy III (D-MA) led the calls for de-scheduling, arguing that its status under the CSA has restricted necessary research and resulted in unjust incarcerations. Republicans agreed on the need to promote more research on the medical applications and safety of cannabis, but they expressed greater concern about de-scheduling the substance. Members of both parties criticized the Drug Enforcement Agency (DEA) for its slow approval of registrations to grow alternative samples of cannabis for research. There were also bipartisan concerns raised over the labeling and marketing of commercially available CBD and hemp products in the aftermath of the removal of these substances from Schedule I status in the 2018 Farm Bill.

Witnesses were also moderate in their advocacy for changes to federal cannabis policy. Dr. Nora Volkow, the Director of the National Institute on Drug Abuse (NIDA), advocated for changes to facilitate more research, but also cautioned against viewing marijuana as a safe substance by pointing to correlations between the drug and both psychosis and poor educational outcomes. Matthew Strait, a Senior Policy Advisor at the DEA, acknowledged researcher frustrations about the registration process to grow alternative samples of cannabis for research purposes, and he said the agency are committed to easing this process in the aftermath of the 2018 Farm Bill.

## Democratic States Petition Supreme Court to Rule on ACA

### Key Points:

- *The Democratic States in Texas v. Azar filed a writ of certiorari with the Supreme Court on January 3 seeking immediate review.*
- *The federal government and Republican plaintiffs filed a response arguing there is nothing in the Fifth Circuit decisions to remand that warrants and immediate review.*

On January 3, the Democratic states and the House of Representatives petitioned the Supreme Court requesting immediate review of the Fifth Circuit decision in *Texas v. Azar*. Recall the Fifth Circuit upheld the lower court's ruling that the individual mandate was now unconstitutional but remanded further consideration of whether the individual mandate could be severed from the rest of the Affordable Care Act (ACA) back to the lower court.

In their [petition](#), the Democratic states argue the invalidation of the statute creates uncertainty about the status of the ACA. They point out individuals, businesses, and state and local governments must make decisions each year that relate to the ACA and need some predictability. They argue the case was not remanded for further factfinding and further deliberation by the lower court will only increase confusion on the ACA's status. They assert it is clear Congress intended to leave the rest of the ACA in place when it eliminated the individual mandate. They have [requested](#) the Supreme Court consider the petition at its January 24 or February 21 conferences with oral arguments on April 29 or at a special May 2020 sitting.

In its January 10 [reply](#), the federal government argued there is no need for immediate review as the lower courts decision invalidating the entirety of the ACA is stayed until adjudication is complete. It notes the Fifth Circuit did not



address the question of severability, making the Supreme Court's review premature. It requests the Supreme Court defer any review pending a final decision from the Fifth Circuit. The Republican states [concurred](#) with the federal government's arguments.

The Supreme Court has not yet indicated when it will consider the petition.

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

## **TRADE**

### **USMCA Deal Passes Senate, President Expected to Sign**

#### *Key Point:*

- *The Senate approved the USMCA implementing bill by a vote of 89-10, sending it to President Trump for his signature.*

The U.S.-Mexico-Canada Agreement (USMCA) implementing bill ([H.R. 5430](#)) was approved by the Senate 89-10 on Thursday after several hours of debate over two days, clearing its way for President Trump's signature and ratification. Senators opposed to the agreement included Booker (D-NJ), Schatz (D-HI), Gillibrand (D-NY), Harris (D-CA), Markey (D-MA), Reed (D-RI), Sanders (I-VT), Schumer (D-NY), and Whitehouse (D-RI). Senator Toomey (R-PA) was the only GOP senator to vote nay, while Senator Inhofe (R-OK) did not vote due to a family medical emergency.

Before the final USMCA vote, Senator Toomey raised a point of order and took issue with a provision in the implementing bill allowing some spending to be afforded emergency designation benefits for budget purposes, arguing that it is a clear abuse of the designation.

Democrat opposition centered around labor standards and environmental provisions. However, most Democrats lauded the agreement for including the Wyden-Brown package which strengthens enforcement mechanisms in the agreement. Senate Finance Committee Ranking Member Wyden (D-OR) and other Democrat leaders have commended the office of the U.S. Trade Representative (USTR) for working closely with Democrats to address their concerns.

### **U.S.-China Phase One Deal Signed**

#### *Key Points:*

- *On Wednesday, the U.S. and China signed Phase One of an economic and trade agreement.*
- *China has made many commitments, including purchasing \$200 billion worth of U.S. goods and services. The U.S. has agreed to cut the 15 percent tariffs on \$120 billion worth of Chinese goods in half.*
- *25 percent tariffs on \$200 billion worth of Chinese goods will remain in place until a Phase Two deal is signed.*

On Wednesday, the U.S. and China signed a "[Phase One](#)" trade agreement, that includes a range of commitments from China on intellectual property and other issues, as well as an agreement to purchase \$200 billion more in U.S. goods and services over two years. The deal also includes a series of commitments aimed at limiting sanitary and phytosanitary trade barriers; a pledge to confiscate and destroy counterfeit products; a promise to ensure U.S. market access for goods other countries protect as geographical indications; a requirement that internet service providers adopt notice-and-takedown procedures; and provisions banning the forced transfer of technology and the competitive devaluation of currency. China did not agree to reduce its retaliatory tariffs on U.S. goods, but did agree to increase its purchases of U.S. products by \$200 billion over 2017 levels.

USTR Lighthizer said Wednesday that he expects China's commitment to purchase U.S. goods should overshadow the tariffs, as Beijing has been issuing exceptions for U.S. products.

The U.S. will be maintaining the 25 percent tariffs on \$250 billion worth of Chinese products despite the Phase One deal. President Trump has said that these tariffs will stay in place until "Phase Two" of the deal is completed. However, the U.S. did commit to reducing the 15 percent duties on roughly \$120 billion worth of Chinese goods to 7.5 percent effective February 14, according to a draft Federal Register notice released by the USTR. The tariff cut and Phase One deal will enter into force simultaneously. The USTR has released a Fact Sheet on the deal which can be found [here](#).

*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.*