

March 19, 2021

Washington Update

This Week In Congress

House – The House passed the American Dream and Promise Act ([H.R. 6](#)), the Farm Workforce Modernization Act ([H.R. 1603](#)), the Violence Against Women Reauthorization Act ([H.R. 1620](#)), the Paycheck Protection Program (PPP) Extension Act ([H.R. 1799](#)), a resolution to remove the deadline for ratification of the Equal Rights Amendment ([H.J.Res. 17](#)), and legislation to prevent automatic spending cuts as a result of the passage of the American Rescue Plan Act through reconciliation ([H.R. 1868](#)).

Senate – The Senate confirmed the nominations of Deb Haaland to be Secretary of the Interior, Isabella Casillas Guzman to be Administrator of the Small Business Administration, Katherine Tai to be U.S. Trade Representative, Xavier Becerra to be Secretary of Health and Human Services, William Burns to be Director of the CIA, and Brian McKeon to be Deputy Secretary of State for Management and Resources.

Next Week In Congress

House – The House will hold a committee work week and meet in pro forma session.

Senate – The Senate is expected to continue its consideration of pending nominations, including Marty Walsh to be Secretary of Labor, Shalanda Young to be Deputy Director of the Office of Management and Budget, Adewale Adeyemo to be Deputy Secretary of the Treasury, David Turk to be Deputy Secretary of Energy, Vivek Murthy to be Surgeon General, and Rachel Levine to be Deputy Secretary of Health and Human Services. The Senate is also expected to vote on the Paycheck Protection Program (PPP) Extension Act.

TAX

Senators Sanders and Warren Introduce Bill to “Combat Excessive CEO Pay”

Key Point:

- *Senators Sanders and Warren have introduced a bill designed to levy a tax penalty on corporations whose CEOs make over 50 times what the average employee makes.*

Earlier this week, Senators Sanders (I-VT) and Warren (D-MA) introduced the Tax Excessive CEO Pay [Act](#). Under the proposal, the company tax rate would incrementally increase .5% points for companies which pay their CEOs between 50 and 100 times more than their typical worker. The penalty will increase by .5% every 50 times greater the CEOs pay is than a typical employee. The highest penalty would be 5 percentage points for companies with leaders making more than 500 times what the typical employee

makes. The legislation would extend the current pay ratio disclosure rules for public companies to private companies with gross receipts of \$100 million per year. The additional corporate tax rates would apply to both public and private companies with excessive CEO pay. According to the office of Senator Sanders (I-VT), the bill could raise \$150 billion in tax revenue over the next 10 years, but the bill has yet to be scored by the Joint Committee on Taxation (JCT). Additionally, Senator Sanders, the Chairman of the Senate Budget Committee, is holding a hearing Wednesday on income and wealth inequality.

IRS Announces Extension of Tax Filing Deadline

Key Points:

- *IRS to extend tax filing deadline beyond April 15 to assist taxpayers as the COVID-19 pandemic continues.*
- *Certain deadlines, like payment of estimated taxes due April 15, are not being extended.*

Earlier this week the Internal Revenue Service (IRS) [announced](#) they would delay the 2021 tax filing deadline from April 15 to May 17. “This continues to be a tough time for many people, and the IRS wants to continue to do everything possible to help taxpayers navigate the unusual circumstances related to the pandemic, while also working on important tax administration responsibilities,” said IRS Commissioner Rettig in a statement. In addition, taxpayers can also delay payment of any money owed the IRS until May 17, but the extension specifically does not apply to “estimated tax payments that are due on April 15, 2021. These payments are still due on April 15.” This tax filing extension applies only to federal income taxes, and the IRS cautions that taxpayers must check on requirements in their individual states.

Republican State Attorneys General Plan to Sue Biden Administration Over American Rescue Plan Provision

Key Point:

- *House Ways and Means Committee Republicans and Republican State Attorneys General have sent letters to the Department of Treasury seeking clarifications on provisions in the American Rescue Plan.*

Republican Attorneys General, led by Ohio State Attorney General Dave Yost have announced they plan to sue the Biden Administration over a provision in the American Rescue Plan which prohibits states from using the State Fiscal Recovery Fund to offset tax cuts. However, Treasury issued initial guidance that states shall be allowed to cut taxes before 2022 if they offset these tax cuts with a corresponding spending decrease from another state account. Attorneys General from 21 states have signed a [letter](#) to Treasury Secretary Yellen expressing their concern over this provision. The letter calls on Secretary Yellen to confirm that certain provisions of the American Rescue Plan Act do not attempt to strip States of their core sovereign authority to enact and implement basic tax policy. The letter also expressed similar concern that the relief “would represent the greatest invasion of state sovereignty by Congress in the history of our Republic”. Additionally, Ways and Means Committee Republicans, led by Republican Minority Leader McCarthy (R-CA), Republican Minority Whip Scalise (R-LA), and Ways and Means Committee Chairman of the Subcommittee on Oversight and Reform Comer (R-KY), sent a [letter](#) to Secretary Yellen expressing similar concerns to the letter sent by Republican Attorneys General. The letter called on Secretary Yellen and her staff to answer a number of questions relating to provisions

in the American Rescue Plan with regards to state tax cuts. The Department of Treasury has yet to respond to the letter but further guidance may be forthcoming.

Upcoming Hearings and Events

March 23

International Tax Policy: The Senate Finance Committee will hold a hearing on “[How U.S. International Tax Policy Impacts American Workers, Jobs and Investment](#).” The Committee will hear testimony from Kimberly Clausing, Ph.D., Treasury Deputy Assistant Secretary (Tax Analysis); Pam Olson, Former Treasury Assistant Secretary for Tax Policy; Chye-Ching Huang, Executive Director, The Tax Law Center, NYU School of Law; and James R. Hines Jr., Ph.D., Professor of Economics and Law, University of Michigan.

Members Day Hearing: The House Ways and Means Committee will hold a “[Members Day](#)” hearing which allows off-Committee Members a chance to testify in favor of their legislative proposals, including anything in the Committee’s jurisdiction.

March 24

CARES Act Review: The Senate Banking, Housing and Urban Development Committee will hold a hearing on: “[The Quarterly CARES Act Report to Congress](#).” The Committee will hear testimony from the Honorable Janet L. Yellen, Secretary, Department of the Treasury; and the Honorable Jerome H. Powell, Chairman, Board of Governors of the Federal Reserve System. [Note: while this hearing is in the Banking Committee, tax issue certainly could be raised.]

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

FINANCIAL SERVICES

SEC Requests Public Input on Climate Change Disclosures; CFTC Establishes Climate Risk Unit

Key Points:

- *SEC Acting Chair Allison Herren Lee issued a request for input on how the agency should expand its disclosure regime to require more detail on climate-related risks.*
- *Senate Banking Committee Ranking Member Pat Toomey (R-PA) criticized such changes as an abuse of power and a politicization of the disclosure regime.*

On March 15, Securities and Exchange Commission (SEC) Acting Chair Allison Herren Lee released a [statement](#) announcing that the agency was requesting public input on climate change disclosures. The statement included a list of questions for considerations, including:

- How can the Commission best regulate, monitor, review, and guide climate change disclosures in order to provide more consistent, comparable, and reliable information for investors while also providing greater clarity to registrants as to what is expected of them? Where and how should such disclosures be

provided? Should any such disclosures be included in annual reports, other periodic filings, or otherwise be furnished?

- How can the Commission best regulate, monitor, review, and guide climate change disclosures in order to provide more consistent, comparable, and reliable information for investors while also providing greater clarity to registrants as to what is expected of them? Where and how should such disclosures be provided? Should any such disclosures be included in annual reports, other periodic filings, or otherwise be furnished?
- What are the advantages and disadvantages of establishing different climate change reporting standards for different industries, such as the financial sector, oil and gas, transportation, etc.?
- How should any disclosure requirements be updated, improved, augmented, or otherwise changed over time? Should the Commission itself carry out these tasks, or should it adopt or identify criteria for identifying other organization(s) to do so? If the latter, what organization(s) should be responsible for doing so, and what role should the Commission play in governance or funding? Should the Commission designate a climate or ESG disclosure standard setter? If so, what should the characteristics of such a standard setter be? Is there an existing climate disclosure standard setter that the Commission should consider?
- How should disclosures under any such standards be enforced or assessed? For example, what are the advantages and disadvantages of making disclosures subject to audit or another form of assurance?
- What climate-related information is available with respect to private companies, and how should the Commission's rules address private companies' climate disclosures, such as through exempt offerings, or its oversight of certain investment advisers and funds?
- In addition to climate-related disclosure, the staff is evaluating a range of disclosure issues under the heading of environmental, social, and governance, or ESG, matters. Should climate-related requirements be one component of a broader ESG disclosure framework? How should the Commission craft climate-related disclosure requirements that would complement a broader ESG disclosure standard? How do climate-related disclosure issues relate to the broader spectrum of ESG disclosure issues?

The comment period will be open for 90 days.

In a March 15 [speech](#), Acting Chair Lee expressed support for mandating disclosures around political spending, but noted that the SEC is currently prohibited from finalizing a rule in this area. In a [speech](#) on March 17, Lee called for updates to Form N-PX in order to provide retail investors with greater transparency into how funds vote on their behalf.

Senate Banking Committee Ranking Member Pat Toomey (R-PA) criticized the SEC's actions, [tweeting](#):

This would be a total abuse of power and a politicization of SEC's disclosure standard. What matters is whether an issue is financially material to a reasonable investor, not if it conforms to the woke Left's opinion about what's best for humanity's general welfare.

On March 17, Commodity Futures Trading Commission (CFTC) Acting Chairman Rostin Benham [announced](#) he has established a Climate Risk Unit (CRU) to "support the agency's mission by focusing on the role of derivatives in understanding, pricing, and addressing climate-related risk and transitioning to a low-carbon economy." A press release stated:

Comprised of staff from across the CFTC's operating divisions and offices, the CRU represents the agency's next step in response to what has become a global call to action on tackling climate change. The

CRU is intended to accelerate early CFTC engagement in support of industry-led and market-driven processes in the climate—and the larger ESG—space critical to ensuring that new products and markets fairly facilitate hedging, price discovery, market transparency, and capital allocation.

House Financial Services Committee Holds Second Hearing on GameStop

Key Point:

- *Topics at the hearing included conflicts of interest, PFOF, gamification, short selling, financial transaction taxes, and the settlement cycle.*

On March 17, the House Financial Services Committee, held a [hearing](#) entitled “Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, Part II.” Chairwoman Maxine Waters (D-CA) recalled that the Committee’s previous hearing touched upon conflicts of interest, Payment for Order Flow (PFOF), gamification, clearing and settlement procedures, and the use of social media in the market. She stated Robinhood’s customers are treated much more like the product and suggested the PFOF model may pose a grave risk to the structure of the financial markets. She stressed the events of January showed a light on gaps in the financial markets, and she stressed she will hold a third hearing in the coming weeks to discuss these events and related policy issues with financial regulators.

Ranking Member Patrick McHenry (R-NC) asserted that Democrats were using the hearing to push forward old policies which have failed in the past. He added Democrats are using the events of GameStop trading January to justify placing new restrictions on financial markets and imposing taxes on investors of all sizes. He stressed Democrats are pushing tired old ideas like increased regulations and higher taxes which inevitably will create perverse incentives and rampant inequality. He stressed the accredited investor definition is restrictive and ensures only the rich can receive benefits from certain parts of the market, and he urged Congress to look into getting rid of the accredited investor definition.

Much of the debate at the hearing focused on the PFOF model, with Democrats expressing concern that investors are not receiving best execution. Chairwoman Waters, Representative Brad Sherman (D-CA), and several others argued that PFOF creates conflicts of interest and suggested that the SEC should consider changes to its regulation. Representatives Ann Wagner (R-MO), Frank Lucas (R-OK), Andy Barr (R-KY), Barry Loudermilk (R-GA), and John Rose (R-TN) expressed opposition to banning the PFOF model. Former SEC Commissioner Michael Piwowar (Milken Institute) stated that if PFOF were banned commission free trading would most likely disappear. He added commission-based trading also has the same misalignment issue because brokers make money off of increased trading volume. He added fraction shares, which are extremely important to retail investors, may disappear if commissions are reinstated.

Representatives Nydia Velazquez (D-NY), Ed Perlmutter (D-CO), and Michael San Nicolas (D-Guam) raised concerns with the practice of short selling, suggesting that additional disclosures may be needed.

Representative Bill Huizenga (R-MI) asked how a financial transaction tax (FTT) would affect the market. Alan Grujic (All of Us Financial) responded it would increase the cost of transactions, which would decrease the amount of transactions which would then decrease the amount of liquidity in the

market. He added this tax may price certain people out because it may make trades too costly to undertake.

A number of Republican committee members questioned whether it would be beneficial to shorten the settlement cycle to T+1 or T+0. Piwowar stated that shortening the settlement cycle would take risks out of the system and he stressed the longer the settlement cycle the more counterparty risk is present; however, he stressed that real time settlement may be “a bridge too far” and instead expressed support for moving to T+1.

Senate Banking Holds Hearing on Housing Policy

Key Points:

- *Chairman Sherrod Brown (D-OH) stressed the need to focus on making housing more affordable and resilient against climate change.*
- *Ranking Member Pat Toomey (R-PA) released principles for housing finance reform, calling for urgent action.*

On March 16, 2021, the Senate Banking Housing and Urban Affairs Committee held a [hearing](#) entitled “Home = Life: The State of Housing in America.” Chairman Sherrod Brown (D-OH) stressed how important housing is to people’s lives, particularly as the climate changes. He said the committee has held numerous hearings on the government sponsored enterprises (GSEs) and how housing affects Wall Street, but has not focused enough on how housing affects Main Street. Brown stated that home prices have increased since the 2008 financial crisis, but wages have not kept pace. He emphasized that workers earning a minimum wage cannot afford to rent a two bedroom home anywhere in America. He pointed to the low rate of Black homeownership, stressing the need to more fully enforce the Fair Housing Act. He stated that housing affordability issues have been further exacerbated by the pandemic, noting that many homeowners are struggling to keep up with their rent or mortgage payments. He said the American Rescue Plan Act will provide additional aid to renters, homeowners, and the homeless. He asserted that the bill will help, but Americans cannot simply return to the same “broken system.” He stressed the need to make housing safer, more resilient, and more affordable.

Ranking Member Patrick Toomey (R-PA) argued the lack of progress on increasing homeownership is due to government policies driving up housing prices. Toomey stressed the urgency of housing finance reform. He stated that housing is cyclical and there will eventually be a downturn. He commended the work of Federal Housing Finance Agency (FHFA) Director Mark Calabria and the Trump Administration in reforming the GSEs, including the recent capital rule. However, he asserted that the fundamental flaws in the market still have not been addressed, as the GSEs remain undercapitalized and “too big to fail.” He said the GSEs encourage excessive risk taking and create systemic risk. He said the role of government should be scaled back and free enterprise should be encouraged. He stated that he would work with members of the committee on housing finance reform, noting that the day prior he had released [principles](#) for housing finance reform. The principles call on Congress to enact housing finance reform legislation to:

- Transition the GSE duopoly toward a competitive secondary market;
- End the conservatorships of Fannie Mae and Freddie Mac;
- Establish a level playing field for other sources of private capital that bear mortgage credit risk;

- Foster a liquid secondary mortgage market that promotes the continued availability of affordable 30-year and other long-term fixed-rate mortgage loans across the United States and throughout the economic cycle;
- Protect taxpayers by ensuring that significant first-loss private capital stands in front of any government support and that taxpayers are appropriately compensated for that support;
- Promote equitable access to the secondary mortgage market by mortgage lenders of all sizes, business models, charter types, and locations; and
- Provide for a smooth transition to the reformed housing finance system by ensuring that reforms are incremental and realistic, leveraging the existing regulatory and market structure.

Senate Banking Holds Hearing on Climate Risks to the Financial System

Key Point:

- *Much of the hearing focused on proposals to mandate disclosure of climate-related risks.*

On March 18, the Senate Banking Housing and Urban Affairs Committee held a [hearing](#) entitled “21st Century Economy: Protecting the Financial System from Risks Associated with Climate Change.” Chairman Sherrod Brown (D-OH) said it is known that climate change threatens financial stability and that the financial industry and regulators will have to reckon with decades of risky investments in industries that fuel natural disasters. He stated that industries have fought climate regulation for decades because they can make money in the short term by investing in environmentally harmful practices. He asserted that not enough is known about financial institutions’ exposure to climate risks. He suggested that there should be stronger transparency rules and new tools for regulators. He said some institutions have offered voluntary disclosures, but not enough.

Ranking Member Patrick Toomey (R-PA) asserted that financial regulation should not be used to advance environmental policy. He suggested that if changes to environmental policy are made it should be through the legislative process rather than financial regulation. He stated that climate policy is clearly beyond the Federal Reserve’s purview. He stated that many on the left want the SEC to use its authorities to engage in a progressive agenda. He criticized Acting SEC Chair Lee’s creation of a climate risk task force and her calls for disclosures on political expenditures. He said these actions are an abuse of power and a politicization of the disclosure regime. He asserted that disclosures should be focused on materiality, rather than on disfavored industries. He expressed concern that the SEC could next go after gun manufacturers, conservative media, or “religiously-minded businesses like Hobby Lobby.”

A significant portion of the hearing focused on proposals to require public company disclosures regarding climate-related risk. Chairman Brown and several other Democratic Senators expressed support for requiring additional climate-related disclosures, arguing that they will empower investors to make better informed decisions. Ranking Member Pat Toomey argued that such disclosure requirements are unnecessary, as the SEC already requires companies to disclose material risks. Senator Steve Daines (R-MT) also spoke in opposition, suggesting that the proposed regulations were not an effort to address climate change, but to direct capital away from disfavored industries.

House Financial Services Panel Holds Hearing on Diversity Data; Requests for Data from Investment Firms

Key Points:

- *The Subcommittee debated legislation to mandate the disclosure of diversity data by public companies.*
- *Separately, Committee Chairwoman Waters and Subcommittee Chairwoman Beatty sent requests to some of the largest investment firms regarding data on diversity and inclusion.*

On March 18, the House Financial Services Committee’s Subcommittee on Diversity and Inclusion held a [hearing](#) entitled “By the Numbers: How Diversity Data Can Measure Commitment to Diversity, Equity and Inclusion.”

The Subcommittee discussed the following legislation:

- [H.R. 1277](#), the “Improving Corporate Governance Through Diversity Act of 2021.”
- [H.R. _____](#), the “Diverse Investment Advisers Act.”
- [H.R. _____](#), the “Diversity Data Accountability Act.”
- [H.R. _____](#), the “Diversity in Financial Regulatory Advisory Committees Act.”
- [H.R. _____](#), the “Promoting Diversity and Inclusion in Banking Act.”

Chairwoman Joyce Beatty (D-OH) expressed concern the racial wealth gap has only widened in recent years. She called on regulated financial entities to fully disclose diversity data, and she noted only through understanding performance benchmarks will Congress be able to advance diversity for women and people of color. She noted in order to address poor performance of diversity and inclusion in the financial services sector Chairwoman Waters led the inclusion of section 342 of Dodd-Frank. She noted the Congressional intent of this section was to allow the Office of Minority and Women Inclusion (OMWI) to conduct oversight of diversity and inclusion at regulated entities. She added on average 80% of regulated entities have failed to share diversity and inclusion measures with their regulated entities. She lauded her bill the Diversity Data Accountability Act, which will make the sharing of diversity data pursuant to section 342 mandatory. She announced the Committee will send diversity surveys to the country’s 31 largest financial management firms to be completed and returned to Congress.

Ranking Member Ann Wagner (R-MO) expressed hope the Subcommittee can come together on this issue and she stressed Republicans agree there is much more work to be done. She acknowledged industry successes of retaining minority Americans and she urged the Subcommittee to structure policies in a structural and durable way. She noted a one size fits all approach will not allow the country to reap all the benefits of diversity and inclusion. She urged financial services companies to expand outreach along with making sure their companies are places people want to work. She highlighted a number of ways to plan for strong retention including flexible work hours, mentorship, and remote work when possible. She stated cultural barriers cannot be removed through regulation and legislation and results that benefit both the employee and employer will come from within the company.

In a related effort, House Financial Services Committee Chairwoman Maxine Waters (D-CA) and Subcommittee Chairwoman Joyce Beatty (D-OH) [sent requests](#) to investment firms with \$400 billion or more of assets under management for data on their diversity and inclusion. The requests ask for data

about workforce and board diversity, spending with diverse suppliers, and challenges in implementing diversity policies.

Upcoming Hearings and Meetings

March 23

Treasury/Federal Reserve: The House Financial Services Committee will hold a hearing entitled “Oversight of the Treasury Department’s and Federal Reserve’s Pandemic Response.”

March 24

Public Housing: The House Financial Services Committee’s Subcommittee on Housing, Community Development and Insurance will hold a hearing entitled “Preserving a Lifeline: Examining Public Housing in a Pandemic.”

Treasury/Federal Reserve: The Senate Banking Committee will hold a hearing entitled “The Quarterly CARES Act Report to Congress.” Treasury Secretary Janet Yellen and Federal Reserve Chairman Jerome Powell are scheduled to testify at the hearing.

March 25

Human Trafficking: The House Financial Services Committee’s Subcommittee on National Security, International Development and Monetary Policy will hold a hearing entitled “Ending Exploitation: How the Financial System Can Work to Dismantle the Business of Human Trafficking.”

American Rescue Plan: The Senate Banking Committee will hold a hearing entitled, “American Rescue Plan: Shots in Arms and Money in Pockets.” Witnesses will include: Amy Matsui, National Women’s Law Center; and Sharon Parrott, Center for Budget and Policy Priorities.

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

ENERGY & ENVIRONMENT

FERC Acts on Full Agenda at Meeting

Key Points:

- *On March 18, the Federal Energy Regulatory Commission convened for its monthly open meeting.*
- *Chairman Glick led the Commission in approving a full agenda of business, including actions related to the electric grid and interstate natural gas pipelines.*
- *Glick also noted the Commission’s ongoing work in establishing an Office of Public Participation.*

On Thursday, the Federal Energy Regulatory Commission (FERC) held its March open meeting, which included a robust agenda.

In opening the meeting, Chairman Richard Glick noted that the Commission has started its series of listening sessions on establishing the Office of Public Participation. Congress directed FERC to issue a report on standing up the Office by June 25, 2021.

Glick noted that the Commission would issue an order during the meeting that would, for the first time, assess the greenhouse gas impacts (GHG) of an interstate natural gas pipeline as part of its certification under the Natural Gas Act. Glick said that the “order reverses the Commission’s unlawful course” in not previously considering climate impacts. He also emphasized that conducting such an analysis “doesn’t automatically doom the project”, and indeed would reduce future litigation risk for certificated projects. Glick thanked Commissioners Neil Chatterjee and Allison Clements for helping to “achieve this meaningful result.”

Glick noted two orders, including one addressing the Rover Pipeline, that would address failures of natural gas pipeline sponsors to provide accurate information and comply with conditions of certificates issued under the Natural Gas Act. He declared that “this Commission is not going to look the other way when companies fail to comply with the conditions of their certificates.”

Commissioner Neil Chatterjee expressed support for two items on the agenda: “Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators” and “Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organizations and Independent System Operators”. He said that these actions build “on the work of the Commission to break down market barriers for new technologies.”

FERC’s agenda included:

- An order issuing a Natural Gas Act certificate for Northern Natural Gas Company’s Sioux Falls A-Line Replacement Project. The order is significant because, as discussed by Chairman Glick, for the first time the Commission more fully accounted for greenhouse gas emissions in approving an interstate natural gas pipeline. Glick remarked that a “proposed pipeline’s contribution to climate change is one of its most consequential environmental impacts and we must consider all evidence in the record—both qualitative and quantitative—to assess the significance of that impact.” A [press release](#) noted that “FERC’s approach to natural gas project greenhouse gas emissions has been the subject of disagreement among the commissioners for several years.”
- An order that reversed a prior FERC order regarding the certification of Broadview Solar’s solar power and battery storage facility as a qualifying facility (QF) under the Public Utility Regulatory Policies Act (PURPA). Glick declared that the “order restores a common-sense understanding that QF status should turn on the power production capacity of a facility as a whole, not the capacity of any individual component part”. As described in a [press release](#), the “case provided the Commission the first occasion to interpret how PURPA’s limitation on a facility’s “power production capacity” applies to a facility such as Broadview’s, which has a large array of solar PV cells but is physically incapable of producing more than 80 MW of power for delivery to the purchasing utility. In setting aside the prior order, FERC concluded that it erred by departing from PURPA, its own regulations and precedent.”
- An order directed to Energy Transfer Partners “to show cause why it should not be found to have violated Section 157.5 of the Commission’s regulations by misleading the Commission in its Application for Certificate of Public Convenience and Necessity under section 7(c) of the Natural Gas Act (NGA).” The company faces a potential civil penalty of \$20.16 million.

Energy and Environment Legislation Introduced

Carbon Dioxide Infrastructure: Representatives Mark Veasey (D-TX) and David McKinley (R-WV) and Senators Chris Coons (D-DE) and Bill Cassidy (R-LA) introduced the “Storing CO2 and Lowering Emissions (SCALE) Act” ([H.R. 1992](#)), which is intended to promote “the development of infrastructure necessary to transport CO2 from where it is captured to where it can be utilized in manufacturing or safely and securely sequestered underground.” As described in a [press release](#), the bill would:

- “Establish the CO2 Infrastructure Finance and Innovation Act (CIFIA) program, which will provide flexible, low-interest loans for CO2 transport infrastructure projects and grants for initial excess capacity on new infrastructure to facilitate future growth. Modeled after the existing TIFIA and WIFIA programs for highway and water infrastructure, CIFIA will help facilitate private sector investment in infrastructure critical for reaching net-zero emissions. The bill also includes grants for Front-End Engineering Design (FEED) studies for CO2 transport infrastructure.”
- “Build upon the existing DOE CarbonSAFE program to provide cost sharing for deployment of commercial-scale saline geologic CO2 storage projects. The program would give priority to larger, commercial saline geologic storage projects that will serve as hubs for storing CO2 from multiple carbon capture facilities.”
- “Authorize increased funding to EPA for permitting Class VI CO2 storage wells in saline geologic formations and providing grants for states to establish their own Class VI permitting programs to ensure rigorous and efficient CO2 geologic storage site permitting.”
- “Provide grants to state and local governments for procuring CO2 utilization products and support state and local programs that create demand for materials, fuels, and other products made from captured carbon. The bill also adds the objective of developing standards and certifications for products that use CO2 to DOE’s carbon utilization program.”

Upcoming Hearings and Events

March 22

Infrastructure Legislation: The House Energy and Commerce Committee will hold a [hearing](#) titled “LIFT America: Revitalizing our Nation’s Infrastructure and Economy”. Scheduled witnesses are: Ernest Moniz, former Secretary of Energy; Tom Frieden, former Director, Centers for Disease Control and Prevention; Michael O’Rielly, former Commissioner, Federal Communications Commission (FCC); and Tom Wheeler, former Chairman, FCC.

March 24

Water Management and Natural Infrastructure: The Senate Energy and Natural Resources Committee’s Water and Power Subcommittee will hold a [hearing](#) “to examine the viability of incorporating natural infrastructure in western water management and policy to support economic development, protect watershed health, and build more resilient communities.”

Climate Legislation: The House Energy and Commerce Committee’s Energy Subcommittee will hold a [hearing](#) titled “The CLEAN Future Act: Powering a Resilient and Prosperous America.”

Texas Power Crisis: The House Energy and Commerce Committee’s Oversight and Investigations Subcommittee will hold a [hearing](#) titled, “Power Struggle: Examining the 2021 Texas Grid Failure”.

March 25

Biden Administration Infrastructure Policy: The House Transportation and Infrastructure Committee will hold a [hearing](#) on “The Administration’s Priorities for Transportation Infrastructure”. Secretary of Transportation Pete Buttigieg is scheduled to testify.

Nuclear Power: The Senate Energy and Natural Resources Committee will hold a [hearing](#) “to examine the latest developments in the nuclear energy sector with a focus on ways to maintain and expand the use of nuclear energy in the United States and abroad.”

Review of Oil and Gas Activities on Federal Lands and Waters: The Department of the Interior will hold a [virtual forum](#) on the federal oil and gas program. The event “is part of Interior’s comprehensive review of the federal oil and gas program as called for in Executive Order 14008 and will feature several panels to highlight perspectives from invited participants including industry representatives, labor and environmental justice organizations, natural resource advocates, Indigenous organizations, and other experts.”

March 30-31

Great Lakes: The Environmental Protection Agency (EPA) will hold a [public meeting](#) of the Great Lakes Advisory Board.

April 13

Advanced Nuclear Reactors: The Nuclear Regulatory Commission (NRC) will hold a [briefing](#) on “Advanced Reactor Preparedness Through Regulatory Engagement and Research Cooperation”

April 16

FERC Office of Public Participation: The Federal Energy Regulatory Commission (FERC) will hold a [workshop](#) “to provide interested parties with the opportunity to provide input...on the creation of the Office of Public Participation.” Congress required FERC to report by June 25, 2021 “on the Commission’s progress towards establishing the Office of Public Participation, including an organizational structure and budget for the office, beginning in fiscal year 2022.” FERC is seeking input on issues related to establishing the office, including: (1) “the office’s function and scope as authorized by section 319 of the [Federal Power Act];” (2) “the office’s organizational structure and approach, including the use of equity assessment tools;” (3) “participation by tribes, environmental justice communities, and other affected individuals and communities, including those who have not historically participated before the Commission; and” (4) “intervenor compensation.”

April 29

“Electrification and the Grid of the Future”: The Federal Energy Regulatory Commission (FERC) will hold a [technical conference](#) on “Electrification and the Grid of the Future”. The conference will “discuss electrification—the shift from non-electric to electric sources of energy at the point of final consumption (e.g., to fuel vehicles, heat and cool homes and businesses, and provide process heat at industrial facilities).”

May 6

Environmental Justice: The Environmental Protection Agency’s (EPA) National Environmental Justice Advisory Council (NEJAC) will hold a [virtual public meeting](#). The meeting “will focus on several topics including, but not limited to, EPA administration transitions priorities, and discussions and deliberations of a charge related to the reuse and revitalization of Superfund and other contaminated sites.”

June 17

Environmental Justice: The Environmental Protection Agency’s (EPA) National Environmental Justice Advisory Council (NEJAC) will hold a [virtual public meeting](#). The meeting “will focus on several topics including, but not limited to, EPA administration transitions priorities, and discussions and deliberations of a charge related to the reuse and revitalization of Superfund and other contaminated sites.”

June 22-24

Market and Planning Efficiency Through Improved Software: The Federal Energy Regulatory Commission (FERC) will hold a [technical conference](#) “to discuss opportunities for increasing real-time and day-ahead market efficiency of the bulk power system through improved software.” FERC will issue a detailed agenda for the technical conference after May 28, 2021.

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

HEALTH**HHS Delays Rebate Rule to 2023***Key Point:*

- *Following an order by the District Court for the District of Columbia, the Department of Health and Human Services has delayed the implementation of the rebate rule to January 1, 2023.*

On March 18, the Department of Health and Human Services (HHS) filed [notice](#) in the Federal Register that it would be delaying total implementation of the so-called “rebate rule” to January 1, 2023. This notice followed a court order issued by the District Court for the District of Columbia in PCMA v. HHS postponing the effective date.

The rule was originally to take effect January but had already been placed partially on hold pending the court’s review. The rule would require pharmacy benefit managers and insurers to pass on rebates they received from manufacturers on to the patient at the point of sale.

Federal Officials Testify on COVID-19 Response and Vaccine Distribution*Key Points:*

- *On March 17, the House Energy and Commerce Subcommittee on Oversight and Investigations convened a hearing with NIAID Director Anthony Fauci, CDC Director Rochelle Walensky, and Center for Biologics Evaluation and Research Director Peter Marks to discuss COVID-19 vaccine distribution.*
- *On March 18, Fauci, Walensky, Marks, and David Kessler, Chief Science Officer for COVID Response at the Department of Health and Human Services, testified before the Senate Health, Education, Labor, and Pensions Committee about the federal COVID-19 response.*

On March 17, 2021 the House Energy and Commerce Committee’s Subcommittee on Oversight and Investigations held a [hearing](#) entitled, “Leading the Way Forward: Biden Administration Actions to Increase COVID-19 Vaccinations.” Topics discussed in the hearing included: (1) American Rescue Plan; (2) Distribution Timeline; (3) Stockpile Expiration; (4) Data Collection & Availability; (5) Reopening Schools; (6) Long Term Disease; (7) Travel Guidance; (8) Dialysis Patients; (9) Infrastructure Resiliency; (10) Vaccine Hesitancy; (11) Purchasing Contracts; (12) Global Vaccine Initiative; (13) Vaccine Prioritization; (14) Nasally Administered Vaccines; (15) Disparities; (16) Disinformation; (17) Home Tests; (18) Pediatric Risks; and (19) COVID-19 Variants.

House Energy and Commerce Subcommittee on Oversight and Investigations Chairwoman Diana DeGette (D-CO) expressed interest in learning about dose availability, equity, and vaccine hesitancy. Full Committee Chairman Frank Pallone (D-NJ) highlighted the Federal Retail Pharmacy Program and applauded President Biden’s directive to make all adult Americans eligible for the vaccine by May 1. Subcommittee Ranking Member Morgan Griffith (R-VA) raised questions about virus variants, long term effects of the virus, and the outlook for additional vaccine candidates. Full Committee Ranking Member Cathy McMorris Rodgers (R-WA) said the Biden Administration was set up for success by Trump Administration initiatives and expressed concern about the mental health crisis caused by school closures.

In response to questions on equity, Centers for Disease Control and Prevention (CDC) Director Rochelle Walensky stressed the CDC is actively working to ensure 10 percent of vaccine distribution resources are directed toward health equity initiatives including the launch federal vaccine sites in underserved communities. Members also expressed concern about growing rates of vaccine hesitancy across the U.S. National Institute of Allergy and Infectious Disease Director Anthony Fauci noted the American Rescue Plan includes substantial funding to launch a campaign to promote the COVID-19 vaccines. He recommended members of Congress demonstrate support for the vaccine by publicizing their own vaccine appointments. Walensky urged a greater understanding of the roots for each type of hesitancy.

Members also expressed concern about the potential long-term symptoms of COVID-19 in patients who have otherwise recovered. Walensky reported the CDC is collecting data on this phenomenon and will report on it as results emerge. The witnesses emphasized data will continue to be assessed on virus variants as well as the long-term immune response for vaccines.

On March 18, 2021 the Senate Health, Education, Labor, & Pensions Committee held a [hearing](#) entitled, “Examining Our COVID-19 Response: An Update from Federal Officials.” Topics discussed in the hearing included: (1) Vaccine Hesitancy; (2) Herd Immunity; (3) mRNA Approval; (4) Guidance; (5) Genomic Sequencing; (6) Domestic Supply Chain; (7) Reinfection; (8) Vaccine Contracts; (9) Reopening Schools; (10) Long Term Assistance; (11) Correlates of Immunity; (12) Equitable Access; (13) Booster Doses; (14) Cruise Ship Guidance; (15) Dose Forecasting; (16) Mitigation Measures; (17) Southern Border; (18) Therapeutics; and (19) Pediatric Trials.

Chairwoman Patty Murray (D-WA) touted ARP investments in testing, contact tracing, genomic sequencing to stay ahead of virus variants, equity, mental health, and support for community health centers (CHCs). Ranking Member Richard Burr (R-NC) called for reopening schools, business, and global commerce and recommended greater reliance on private sector partners for testing and surveillance.

There was bipartisan agreement about the urgency of addressing vaccine hesitancy. Walensky reiterated the need to understand all roots of vaccine hesitancy. She outlined the role of trusted community messengers in improving vaccine confidence. David Kessler, Chief Science Officer for COVID-19 Response encouraged emphasis on the remarkable safety profile of the vaccines. Fauci said every person should take whichever vaccine is offered to them first. The Committee also demonstrated bipartisan interest in the therapeutics pipeline. Senator Jacky Rosen (D-NV) asked how the National Institutes of Health (NIH) is evaluating and potential treatments for long term health consequences of COVID-19. Fauci highlighted a massive program between the CDC and the NIH to follow cohorts of individuals with long term symptoms. He noted it is difficult to develop therapeutics without understanding the underlying pathogenic mechanism of the disease.

Upcoming Hearings and Meetings

March 23

Maternal Health: The House Appropriations Committee will hold a hearing on “Addressing the Maternal Health Crisis.”

Drug Pricing: The Senate Health, Education, Labor and Pensions Committee will hold hearing “Why Does the US Pay the Highest Prices in the World for Prescription Drugs?”

ACA: The House Energy and Commerce Committee will hold a hearing on “Building on the ACA: Legislation to Expand Health Coverage and Lower Costs.”

March 24

Supply Chain: The House Veterans’ Affairs Committee will hold a hearing on “The Pandemic and VA’s Medical Supply Chain: Evaluating the Year-Long Response and Modernization.”

March 25

Disparities: The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “Examining Our COVID-19 Response: Improving Health Equity and Outcomes by Addressing Health Disparities.”

Private Equity: The House Ways and Means Committee will hold a hearing on “Examining Private Equity’s Expanded Role in the U.S. Health Care System.”

For more information about health care issues you may [email](#) or call Nicole Ruzinski Bertsch or George Olsen at 202-659-8201. Elisabeth Dawahare contributed to this section.

TRADE

Katherine Tai Confirmed as USTR by the Senate

On Wednesday, the Senate voted unanimously to confirm Katherine Tai as U.S. Trade Representative (USTR). She was [sworn in on Thursday](#) as the nineteenth USTR by Vice President Harris.

U.S. and China Hold First Talks During Biden Administration

Key Point:

- *Biden Administration officials are meeting with Chinese officials in Alaska to discuss a number of human rights, national security and trade related issues, though progress on trade not expected.*

U.S. Secretary of State Blinken and National Security Adviser Sullivan began meeting with Chinese officials in Anchorage, Alaska on Thursday. The two have and will meet with Yang Jiechi, a member of the Communist Party’s Politburo, and Foreign Minister Wang Yi to discuss a number of U.S.-China issues, including human rights, trade, national security and cyber issues. Additionally, it has been reported by that the U.S. has set the bar low for the talks this weekend, expecting it to be more of a “clearing the air” effort where both sides offer their views and grievances. For example, the opening statements went longer than typical, and involved a fair amount of back and forth between the sides.

However, it has also been reported Beijing is seeking to hold a bilateral trade discussion between President Biden and President Xi in Alaska in April if the initial discussions are productive. The Biden-Xi meeting as envisioned by Chinese officials would be organized around Earth Day on April 22 to show both leaders are focused on combating climate change, one of the experts familiar with the discussions said. When White House Press Secretary was asked under what conditions a Biden-Xi meeting could take place, she said, “I don’t think I’m here to set conditions today.” She noted President Biden is “eager” to get a debrief from his national security team after the Alaska meetings, and “work with them to determine what the next right step is,” she said. Chinese Officials also have told media outlets no formal plans are in place yet for a President Biden, President Xi meetings but discussions appear to be ongoing.

Senate Bill Would Add Network Security Objective to the TPA

Key Points:

- *A bipartisan group of Senators has re-introduced the Network Security Trade Act of 2021 which would amend the Trade Promotion Authority (TPA) law to include a negotiating objective that addresses global communications infrastructure security by focusing on state-owned enterprises.*

A bipartisan group of Senators has re-introduced the Network Security Trade Act of 2021 which would amend the Trade Promotion Authority (TPA) law to include a negotiating objective that addresses global communications infrastructure security by focusing on state-owned enterprises. The bill would amend the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 to include the new negotiating objective. The bill was reintroduced by Sen. Thune (R-SD), Sen. Stabenow (D-MI), Sen. Fischer (R-NE) and Sen. Warner (D-VA).

The TPA, which is set to expire on June 30, allows Congress to consider implementing bills for trade agreements under expedited procedures, including a guaranteed up-or-down vote with no amendments. The TPA was last re-authorized in June 2015. TPA reauthorization is possible this year, but so far a clear indication that either Congressional Democrats or the Biden Administration will pursue it remains to be given.

For more information about trade issues you may [email](#) or call Christopher Hatcher at 202-659-8201. Ryan Sigmon contributed to this section.

This Week in Congress was written by Alex Barcham.