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Washington Update

This Week In Congress

Senate – The Senate continued its consideration of the legislative vehicle for a bipartisan infrastructure framework (H.R. 3684), adopting more than a dozen amendments to the bill. The Senate confirmed the nomination of Robert Silvers to be Under Secretary of Homeland Security, Jose Fernandez to be Under Secretary of State, and Kathleen Miller to be Deputy Under Secretary of Defense.

House – The House was in recess and met in pro forma session.

Next Week In Congress

Senate – The Senate is scheduled to continue its consideration of the bipartisan infrastructure package this weekend, with a vote on invoking cloture on the substitute amendment scheduled for 12:00pm Saturday. The Senate could vote on final passage of the bill this weekend, but additional delays may occur. Once consideration of the infrastructure framework is completed, the Senate will move on to consideration of a budget resolution, which would begin the process of moving forward with a $3.5 trillion reconciliation package.

House – The House is scheduled to be in recess and meet in pro forma session.

TAX

Infrastructure Package Continues through the Senate

Key Point:

- *The Senate is continuing the process of advancing the bipartisan infrastructure package, as Senators offered numerous amendments.*

The bipartisan infrastructure bill, which has passed several procedural votes with broad support from all Democratic and many Republican senators, has been under continuing consideration and amendment in the Senate this week. Democrats and Republicans have offered a series of amendments. As of the end of the day on Wednesday, the Senate had considered a total of 22 amendments, 12 of which were adopted. Thirteen of the 22 amendments were offered by Republicans. Senators attempted to reach an agreement to hold additional amendment votes on Thursday, but were unsuccessful. Senate Majority Leader Schumer (D-NY) took steps on Thursday to move to cloture on the bill and shut off the amendment process for a possible final passage vote this weekend or Monday. It is also important to note that the Senate will not be in session on Friday as many Senators will be flying to Wyoming for former Senator Mike Enzi's (R-WY) funeral. Majority Leader Schumer previously indicated that the

Senate is expected to be in session over the weekend in order to burn off 30 hours of the post-cloture debate. Experts familiar with the issue have predicted that the final vote on the bill could occur on Tuesday if no agreements are made to shorten the time of debate during the weekend or on Monday.

Additionally, the Congressional Budget Office (CBO) released its revenue estimate of provisions in the package on Thursday, and budget rules mean the CBO did not credit some of the offsets because they were already taken into the baseline (such as the savings from reduced unemployment spending by states or spring spectrum auctions), or budget scoring rules prevented them from counting (such as extending certain guarantee fees). The CBO estimated that over the 2021-2031 period, the bill would decrease direct spending by $110 billion, increase revenues by $50 billion, and increase discretionary spending by $415 billion. On net, the legislation would add $256 billion to projected deficits over that period.

As a reminder, the budget offsets for the bipartisan infrastructure package include:

- $205 billion from repurposing of certain unused COVID relief dollars
- Funding from recouping fraudulently paid benefits from enhanced federal unemployment insurance (UI) supplement
- $49 billion from delaying Medicare Part D rebate rule
- $53 billion from certain states returning unused enhanced federal UI supplement
- $20 billion from sales of future spectrum auctions and $67 billion from proceeds of the February 2021 c-band auction
- $56 billion in economic growth resulting from a 33 percent return on investment in the legislation's long-term infrastructure projects
- $28 billion from applying information reporting requirements to cryptocurrency (which was potentially subject to change based on a Wyden-Toomey amendment)
- $21 billion from extending fees on government sponsored enterprises (GSEs)
- $13 billion from reinstating certain Superfund fees
- $8.7 billion from the mandatory sequester
- $6 billion from extending customs user fees
- $6 billion in sales from the Strategic Petroleum Reserve
- $3 billion in savings from reducing Medicare spending on discarded medications from large, single-use drug vials
- $2.9 billion from extending available interest rate smoothing options for defined benefit pension plans

Senator Wyden Introduces a Number of Tax Proposals Which Could Find Their Way into the Expected Reconciliation Package

Key Point:

- *Senate Finance Committee Chairman Wyden (D-OR) has released a number of tax related proposals which could find their way into the expected Democratic Reconciliation package.*

Senate Finance Committee Chairman Wyden (D-OR) released a bill to overhaul deductions for passthrough businesses which were created as a part of the Tax Cuts and Jobs Act (TCJA). Currently, the qualified business income deduction, also known as 199A, allows certain qualified businesses, such as sole proprietors, partnerships and S-corporations, to write off up to 20% of net income. The bill, deemed the Small Business Tax Fairness Act (S.___), would phase out this provision for households making more than $400,000 annually. In 2021, those making less than $164,900 or married couples filing together who earn under $329,800 may qualify for the full 20% deduction. However, households earning above those thresholds may only claim part of the deduction and some types of businesses lose eligibility altogether. The proposal from Senator Wyden phases out the provision for those making over $400,000 and completely eliminates the deduction at $500,000 annually. This provision is designed to lower rates for small businesses and others operating as passthroughs meaning they pay taxes at the inside all even, so the income limit would effectively prevent many businesses from getting any benefit from 199A. As might be expected, this proposal met with significant pushback from small and medium sized pass-through businesses.

Additionally, on Thursday, Senator Wyden introduced the "Modernization of Derivatives Tax Act of 2021" ("MODA"). Senator Wyden also requested that the Joint Committee on Taxation (JCT) provide background, a description of present law, and a description of the bill. According to the JCT "MODA unifies and simplifies the treatment of derivatives, providing one timing rule, one character rule, and one sourcing rule for all derivatives." Additionally, if a taxable event occurs with respect to a derivative, MODA requires that this gain or loss be recognized and taken into account in the year the taxable event occurs. The future of these two proposals remains unclear but some have speculated that these pieces of legislation could find their way into the Democratic reconciliation proposal expected this fall.

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 Chairman Gensler Calls Additional Disclosures for Chinese Company Listings

Key Points:

- *Chairman Gensler announced he has directed staff to require additional disclosures for China-based companies seeking to register securities in the U.S.*
- *Gensler cited recent developments in China, as well as the use of the Variable Interest Entities structure.*

On July 30, Securities and Exchange Commission (SEC) Chairman Gary Gensler announced that he has "asked staff to seek certain disclosures from offshore issuers associated with China-based operating companies before their registration statements will be declared effective." Gensler noted that this action comes in response to recent developments in China and risks associated with the Variable Interest Entities (VIEs) structure used in China.

Gensler stated that he was calling for issuers to disclose the following:

> That investors are not buying shares of a China-based operating company but instead are buying shares of a shell company issuer that maintains service agreements with the associated operating company. Thus, the business description of the issuer should clearly distinguish the description of the shell company's management services from the description of the China-based operating company;
>
> That the China-based operating company, the shell company issuer, and investors face uncertainty about future actions by the government of China that could significantly affect the operating company's financial performance and the enforceability of the contractual arrangements; and
>
> Detailed financial information, including quantitative metrics, so that investors can understand the financial relationship between the VIE and the issuer.

Additionally, for China-based operating companies seeking to register securities with the SEC, either directly or through a shell company, Gensler called for disclosure of:

> Whether the operating company and the issuer, when applicable, received or were denied permission from Chinese authorities to list on U.S. exchanges; the risks that such approval could be denied or rescinded; and a duty to disclose if approval was rescinded; and
>
> That the Holding Foreign Companies Accountable Act, which requires that the Public Company Accounting Oversight Board (PCAOB) be permitted to inspect the issuer's public accounting firm within three years, may result in the delisting of the operating company in the future if the PCAOB is unable to inspect the firm.

Chairman Gensler Urges Congress to Pass Legislation Regarding Cryptocurrency

Key Point:

- *Chairman Gensler urged Congress to pass legislation granting the SEC additional authorities to crypto trading, lending, and decentralized finance platforms.*

On August 3, SEC Chairman Gensler gave remarks at the Aspen Security Forum regarding cryptocurrency. Gensler asserted that "This asset class is rife with fraud, scams, and abuse in certain applications," adding "in many cases, investors aren't able to get rigorous, balanced, and complete information."

Gensler also expressed concern that "the use of stablecoins on these platforms may facilitate those seeking to sidestep a host of public policy goals connected to our traditional banking and financial system: anti-money laundering, tax compliance, sanctions, and the like."

In his conclusion, Gensler stated the following:

> Certain rules related to crypto assets are well-settled. The test to determine whether a crypto asset is a security is clear.
>
> There are some gaps in this space, though: We need additional Congressional authorities to prevent transactions, products, and platforms from falling between regulatory cracks. We also need more resources to protect investors in this growing and volatile sector.
>
> We stand ready to work closely with Congress, the Administration, our fellow regulators, and our partners around the world to close some of these gaps.
>
> In my view, the legislative priority should center on crypto trading, lending, and DeFi platforms. Regulators would benefit from additional plenary authority to write rules for and attach guardrails to crypto trading and lending.

In a tweet the following day, Commodity Futures Trading Commission (CFTC) Commissioner Brian Quintenz said, "Just so we're all clear here, the SEC has no authority over pure commodities or the trading venues, whether those commodities are wheat, gold, oil…or #crypto assets". This was retweeted by the House Agriculture Committee Republican feed, saying that Commissioner Quintenz "is right, #crypto is bigger than the SEC. Congress needs to write the rules of the road to protect investors AND innovation in the digital economy."

SEC Issues Policy Statement on Revised Whistleblower Procedures

Key Points:

- *The SEC issued revised procedures regarding its whistleblower program, which will remain in place while the Commission considers changes to rules implemented in September 2020.*
- *Commissioners Peirce and Roisman expressed opposition to the revised procedures, arguing that they set a bad precedent.*

On August 2, SEC Chairman Gary Gensler announced that he had directed SEC staff to prepare potential revisions to amendments adopted to the Commission's whistleblower program in September 2020. Gensler expressed concern that the September 2020 amendments could discourage whistleblowers from coming forward. On August 5, the SEC issued a statement announcing revised procedures for the "Interim Policy-Review Period," so that whistleblowers "are not disadvantaged under the components of Rule 21F-3(b)(3) and Rule 21F-6 that may be revised."

Commissioners Hester Peirce and Elad Roisman released a joint statement in opposition to the policy statement regarding the whistleblower rules. Their statement asserts:

> This course of action is unwise and continues a troubling and counterproductive precedent: If a rule challenge is pending in court when the presidential administration changes, the Commission believes it may immediately abandon proposed, noticed, and adopted rules at the majority's will via public statements. Abandonment of duly-adopted rules without notice and request for comment raises the prospect that the rules that the Commission adopts in compliance with the Administrative Procedure Act may be interim at best, and transitory at worst. This reduces the certainty of the law, a consequence that does not bode well for the Commission or those it regulates.

Senate Banking Committee Holds Regulator Oversight Hearing

Key Points:

- *Chairman Sherrod Brown (D-OH) called for stronger regulatory oversight of financial institutions.*
- *Ranking Member Pat Toomey (R-OH) raised concerns that the Biden Administration is using financial regulations to pursue social goals.*

On August 3, the Senate Committee on Banking, Housing, and Urban Affairs held a legislative hearing entitled: "Oversight of Regulators: Does our Financial System Work for Everyone?" The Committee received testimony from National Credit Union Administration (NCUA) Chairman Todd Harper, Federal Deposit Insurance Corporation (FDIC) Chair Jelena McWilliams, and Acting Comptroller of the Currency Michael Hsu. Chairman Sherrod Brown (D-OH) acknowledged the general public's distrust of large banks, and he stated that people as a result of this distrust often turn to alternative banking options, such as fintech companies, that have "few protections" and can put people's money at risk. He declared that these problems stem from large banks and companies having too much unchecked power over the U.S. economy. He said there should be no-fee accounts so that everyone has the opportunity to open up a bank account and have control over their money. Brown expressed support for strong financial watchdogs in communities to hold financial institutions accountable and to ensure these institutions service their customers and communities. He noted that bank regulators must change their approaches to bank mergers so that banks live up to the promises they make to communities. He expressed his support for stronger capital requirements at banks.

Ranking Member Patrick Toomey (R-PA) said that throughout the COVID-19 pandemic, he was encouraged by a number of modest targeted regulatory changes to support the U.S. banking system but expressed his concerns that the Biden Administration is now using financial regulations to advance social goals that are not related to banking. He noted that the agency heads present today are contributing to this politicization of banking regulations without providing independent analysis, which could erode the long-standing non-partisan objective of having independent regulatory banking agencies. He provided a number of examples of these actions to reinforce his point. He also expressed his concerns over the lack of an appointed Comptroller at the Office of the Comptroller of the Currency (OCC) this far into the year. Toomey declared that instead of focusing on advancing the social goals of the Administration, regulators should focus on looking for ways to increase competition and improve regulatory efficiencies of the U.S. banking system. He acknowledged the ways in which the banking system is changing and said that regulators should want to promote innovation, increase competition, and improve regulatory efficiency to strengthen the country's financial system.

Ranking Member Toomey asked if the federal government should be encouraging more innovative financial institutions, including those that provide digital assets custody services, to enter the regulatory banking system if they wish to do so. Hsu responded in the affirmative and stated that he is supportive of responsible innovation that prevents a "race to the bottom" process for financial institutions. Toomey followed up by asking what the FDIC has learned from banks and other financial institutions about the ways in which they are using digital assets custody services to benefit their banking systems. McWilliams expressed support for technological innovations being included into the U.S. banking system to modernize it.

Federal Reserve Extends Comment Period on FedNow Proposal

Key Point:

- *The Federal Reserve extended the comment period until September 9, 2021.*

On Tuesday, the Federal Reserve Board announced an extension of the comment period on its proposed rule to create the FedNow real-time payment system. The comment period, which was set to expire on August 10, was extended until September 9, 2021. As noted in a press release, "The FedNow Service is a new 24x7x365 service that will support instant payments in the United States and is expected to be available in 2023."

Upcoming Hearings and Meetings

August 11
Consumer Advisory Board: The Consumer Financial Protection Bureau (CFPB) will hold a meeting of its Consumer Advisory Board.

August 12
Community Banking/Credit Union Advisory Council: The CFPB will hold meetings of its Community Banking Advisory Council and Credit Union Advisory Council.

August 13
Academic Research Council: The CFPB will hold a meeting of its Academic Research Council.

For more information about financial services issues you may email Joel Oswald, Mahlet Makonnen, or Alex Barcham.

ENERGY & ENVIRONMENT

Biden Administration Announces Actions on Vehicle Efficiency and Emissions

Key Points:

- *On August 5, President Biden signed an Executive Order on clean vehicles policy, setting a goal for electric vehicles to comprise half of all new cars sold in 2030.*
- *The Environmental Protection Agency also issued a proposed rule and regulatory plan for setting efficiency and emissions requirements for automobiles and trucks.*
- *Congressional Democrats praised the actions for the anticipated environmental and climate benefits while Republicans warned of increased costs and other negative impacts.*

On Thursday, the Biden Administration took the following actions on vehicle efficiency and emissions standards:

- President Biden signed an Executive Order establishing a national target of electric vehicles comprising 50 percent of all new vehicle sales in 2030;
- The Environmental Protection Agency (EPA) released a Notice of Proposed Rulemaking (NPRM) titled "Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards"; and
- The EPA announced the "Clean Trucks Plan", a regulatory roadmap for future emissions and efficiency standards for heavy-duty trucks.

As described in a Biden Administration fact sheet, the Executive Order:

- "sets a new target of electric vehicles representing half of new vehicles sold in 2030";
- establishes "a robust schedule for development of fuel efficiency and multi-pollutant emissions standards through at least model year 2030 for light-duty vehicles and for medium- and heavy-duty vehicles starting as early as model year 2027"; and
- engages "with California and other states leading the way in reducing vehicle emissions".

The White House fact sheet notes that the Executive Order target of 50 percent vehicle sales in 2030 includes "battery-electric, plug-in hybrid-electric, or fuel cell electric vehicles."

The light-duty vehicle NPRM proposes to:

- Replace the Trump Administration's "Safer Affordable Fuel Efficient (SAFE) Vehicles" Final Rule, which was published on April 30, 2020;
- Tighten the vehicle greenhouse gas (GHG) emissions "standards to be more stringent than the SAFE rule standards in each model year from 2023 through 2026";
- Provide "several flexibilities to incentivize the production and sale of vehicles with zero and near-zero emissions technology to reduce compliance costs and to address the lead time of the proposed standards"; and

- Implement "technical amendments to clarify and streamline our regulations."

Public comments on the NPRM are due by September 27, 2021. The EPA will hold a virtual public hearing on the proposal on August 25, 2021.

Reaction split along party lines on Capitol Hill. In a statement, House Energy and Commerce Committee Chairman Frank Pallone (D-NJ) said he is "pleased the President is directing action not just on light- and medium-duty vehicles, but also on heavy-duty vehicles, which are a source of significant pollution for environmental justice communities."

House Energy and Commerce Committee Ranking Member Cathy McMorris Rodgers issued a statement denouncing the Administration's proposed policies. She warned that the actions will increase costs for Americans and represents "a radical push for electric vehicles that will make America more dependent on Chinese supply chains and hurt our global competitive edge."

Upcoming Hearings and Events

August 9-13
Climate Change Adaptation Planning for Tribes: The Department of Energy will hold a virtual course for planning for climate change impacts on issues including: "Overview of climate change and impacts in the west"; "Process of developing climate change adaptation plans"; and "Tools, resources, and partnerships for adaptation planning."

August 11
EPA Nominations: The Senate Environment and Public Works Committee will hold a hearing on the following nominations: Amanda Howe to be Assistant Administrator for Mission Support of the Environmental Protection Agency (EPA); David Uhlmann to be Assistant Administrator for Enforcement and Compliance Assurance of the EPA; and Carlton Waterhouse to be Assistant Administrator of Land and Emergency Management of the EPA.

Renewables and Resiliency: CRES Forum will hold a virtual policy roundtable on "Resiliency and Clean Energy: Keeping the Lights on While Reducing Emissions". The event will feature a keynote address by Federal Energy Regulatory Commission (FERC) Commissioner Neil Chatterjee. The panel discussion will be moderated by Charles Hernick, Vice President of Policy and Advocacy, CRES Forum, and will include: Bryn Baker, Director of Policy Innovation, Renewable Energy Buyers Alliance (REBA); Pat Wood III, CEO, Hunt Energy Network and former FERC Chairman; Jonathan Adelman, Vice President of Strategy and Planning, Xcel Energy; and Elin Swanson Katz, Vice President of Utilities, Tilson.

Williams & Jensen, PLLC
1201 Pennsylvania Avenue, N.W. Suite 800 Washington, D.C. 20004
Telephone: (202) 659-8201 Fax: (202) 659-5249
www.williamsandjensen.com

August 25

Tribal Solar Development Webinar: The Department of Energy will host a webinar to "address regulatory challenges to tribal solar deployment". The webinar is intended "to articulate key barriers to tribal solar and solar-plus-storage adoption at all scales and to ready stakeholders to implement options to address these challenges".

August 26

Unconventional Engine-Fuel Efficiency: The Department of Energy will hold a webinar on "unconventional engine-fuel combinations [that] show the greatest promise for efficiency improvements beyond current light-duty, medium-duty, and heavy-duty technologies." The webinar will examine "how changes to the composition and properties of future fuels could enable approaches such as multi-mode operation of light-duty spark-ignition gasoline engines and advanced compression ignition operation of medium-duty and heavy-duty engines."

September 10

FERC Electric Transmission Incentives Workshop: FERC will convene a workshop to "discuss certain performance-based ratemaking approaches, particularly shared savings, that may foster deployment of transmission technologies."

September 14

Energy and Ancillary Services: FERC will hold a technical conference on "energy and ancillary services markets administered by Regional Transmission Organizations and Independent System Operators".

September 20-25

National Clean Energy Week: National Clean Energy Week will hold its annual Public Policy Symposium. The event will focus on "the world's most pressing challenges in nuclear, solar, wind, wave, hydropower, geothermal, natural gas, biomass, carbon capture, storage, and waste-to-energy technologies."

September 23

FERC Open Meeting: FERC will hold its monthly open meeting.

September 30

Bulk Power System Reliability: FERC will hold a technical conference "to discuss policy issues related to the reliability of the Bulk-Power System."

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

Williams & Jensen, PLLC
1201 Pennsylvania Avenue, N.W. Suite 800 Washington, D.C. 20004
Telephone: (202) 659-8201 Fax: (202) 659-5249
www.williamsandjensen.com

TRADE

House Considering Response to the Senate-Passed U.S. Innovation and Competition Act – China Focused Bill

Key Point:

- *The House is pushing its own version of the U.S. Innovation and Competition Act, which if passed would prompt a conference process to come to a final version.*

The House is discussing adding $52 billion in funding for the Creating Helpful Incentives to Produce Semiconductors in America (CHIPS) Act to its alternative to the U.S. Innovation and Competition Act (S. 1260), which passed the Senate in June. The House version is expected to include the Ensuring American Global Leadership and Engagement Act (H.R. 3524), the National Science Foundation for the Future Act (H.R. 2225), the Department of Energy for the Future Act (H.R. 3593), and possibly the CHIPS Act.

If the House passes any version of a China-focused package, the House and Senate would begin the conference process to produce one version of the legislation that could pass both chambers. It is expected the Trade Act will be one of the most significant roadblocks of the process, specifically the extensions of GSP and the proposed new MTB. Of note, the Senate's version of the Trade Act would direct the Office of the U.S. Trade Representative to restart a product-exclusion evaluation process for goods from China affected by Section 301 tariffs. The House may consider a stand-alone version of a trade package, with GSP and MTB as well as TAA extensions, that could move separately. Exactly how the trade and China packages will move remains to be determined but it seems likely these bills will move at some point.

Senator Coons Suggests That the U.S. Could Lead on Carbon Border Taxes

Key Point:

- *Senator Coons stated the U.S. could establish the first carbon border tax without a federal price on carbon.*

Senator Coons (D-DE), Co-Chair of the Bipartisan Senate Climate Solutions Caucus, and Representative Scott Peters (D-CA) introduced a Carbon Border Tax Proposal last month that some Democrats predict could be included in the $3.5 trillion budget plan. The bill would create a border adjustment measure on carbon-intensive imports to adjust for regulatory costs faced by U.S. businesses. Senator Coons proposed part of the revenue raised from the tax could be a rebate to families facing higher costs, and other funds could be directed to environmental justice or new technologies. It remains to be seen how a "fee" at the border would be allowed under WTO rules if there is not a corresponding price on carbon internally in the U.S., because otherwise that fee looks very much like a protective tariff which would violate trade rules. That said, Senator Coons suggested his proposal could do that.

The European Commission has released a similar proposal building on the EU's Emissions Trading System, possibly leading to an EU Carbon border tax by 2023.

House Ways and Means Republicans Push to Renew Trade Promotion Authority to Counter China

Key Point:

- *18 House Ways and Means Republicans wrote a letter to President Biden and U.S. Trade Representative Katherine Tai urging the renewal of the Trade Promotion Authority (TPA) that expired July 1.*

Ranking Member Kevin Brady (R-TX) and 17 House Ways and Means Republicans wrote a letter to President Biden and U.S. Trade Representative Katherine Tai urging that the TPA be renewed. They argued TPA helps the U.S. compete with China and ensures U.S. workers and businesses are globally competitive. Past versions of TPA have been used to fast track 15 free trade agreements negotiated by the executive branch without congressional input since 1974. The lawmakers argued that without TPA, the U.S. leaves a void in global markets for malign actors to exploit and allies to fill with their own priorities. Republican lawmakers stressed the importance of using TPA to pursue trade negotiations in the Asia-Pacific region as the U.S. recovers from the COVID-19 pandemic.

In March, Agriculture Secretary Tom Vilsack urged Congress to renew TPA, and U.S. Trade Representative Tai stated in May she is interested in working on a new version. Usually, TPA is a very difficult trade vote and is paired with "sweeteners" like TAA (Trade Adjustment Act) extensions and expansions. However, to date this Congress, TAA proposals have been paired with GSP and MTB but no TPA proposal has been offered yet.

For more information about trade issues you may email or call Christopher Hatcher at 202-659-8201. Abbey Schroeder contributed to this section.

This Week in Congress was written by Alex Barcham.