



October 8, 2021

## Washington Update

### This Week In Congress

**Senate** – The Senate passed legislation ([S. 1301](#)) to raise the debt ceiling by \$480 billion, which will allow the federal government to meet its debt obligations through December 3, 2021. The Senate and House passed a short-term extension of surface transportation programs, which was signed into law by President Biden. The Senate confirmed Paloma Adams-Allen to be Deputy Administrator of the U.S. Agency for International Development, Jonathan Meyer to be General Counsel at the Department of Homeland Security, Gwen Graham and Roberto Rodriguez to be Assistant Secretaries of Education, Xochitl Torres Small to be Under Secretary of Agriculture, Alexander Hoehn-Saric to be Chairman of the Consumer Product Safety Commission, and several judicial nominees.

**House** – The House held a committee work week and met in pro forma session.

### Next Week In Congress

**Senate** – The Senate will be in recess and meet in pro forma session. The Senate is scheduled to reconvene on October 19.

**House** – The House will reconvene on October 12 to vote on the Senate-passed bill to raise the debt ceiling.

## TAX

### **Senate Votes to Raise the Debt Ceiling for a Short Term Until December 3, as Reconciliation Discussions Remain Ongoing**

#### *Key Points:*

- *The Senate voted on a short-term extension of the debt ceiling on Thursday and the measure was advanced by a vote of 50-48.*
- *The bill now heads to the House, which is scheduled to vote on it on Tuesday.*

Earlier this week, Senate Minority Leader McConnell (R-KY) offered a proposal to Senate Majority Leader Schumer (D-NY) to pass a short-term extension of the debt limit. This debt limit extension is an actual numerical increase in the debt limit, rather than a suspension of the debt limit until a specific date. It provides a \$480 billion increase from the current, approximately \$22 trillion debt limit that was reimposed on August 1, 2021, with Treasury's extraordinary measures anticipated to be exhausted by October 18. There were two votes which were held on Thursday evening in the Senate. The first vote on invoking cloture resulted in 11 Republican Senators voting in favor, meeting the 60-vote threshold.

The 11 Republican Senators which voted in favor of invoking cloture were Minority Leader McConnell (R-KY), Minority Whip Thune (R-SD), Senator Cornyn (R-TX), Senator Murkowski (R-AK), Senator Moore Capito (R-WV), Senator Shelby (R-AL), Senator Portman (R-OH), Senator Collins (R-ME), Senator Barrasso (R-WY), Senator Rounds (R-SD), and Senator Blunt (R-MO). The second vote on final passage was approved by a vote of 50-48. The bill now returns to the House for its approval. House Majority Leader Hoyer (D-MD) announced that the House will meet on October 12 to vote on the bill.

Prior to Tuesday of this week, Republicans had maintained they would force the Democrats raise the debt ceiling through the reconciliation process. Discussions remain ongoing among moderate Senate Democrats, the White House, and Democratic leadership on the Administration's proposed Build Back Better agenda, which has a proposed price tag of \$3.5 trillion or higher. Previously, Senate Democrats such as Senators Manchin (D-WV) and Sinema (D-AZ) indicated that they would not support a package as large as \$3.5 trillion. The President has also talked about trimming the size of the package to between \$1.7 trillion - \$2.2 trillion, with Progressives pushing for the higher end of that range and moderates pushing the lower range. It remains unclear what programs will be excluded from the original outline of the package in order to get the final version to a smaller size.

*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 Testifies in House Financial Services Committee**

*Key Point:*

- *The hearing focused on a wide range of issues, including digital assets, ESG disclosure, payment for order flow, gamification, SPACs, and China.*

On October 5, the House Financial Services held a [hearing](#) entitled "Oversight of the U.S. Securities and Exchange Commission: Wall Street's Cop is Finally Back on the Beat." The Committee received testimony from SEC Chairman Gary Gensler. Chairwoman Maxine Waters (D-CA) said during the Trump Administration, the SEC provided minimal oversight and there was a lack of regulations on sustainability. She said millions of new investors are entering the market, but the rules are stacked against them. She commented on the emergence of cryptocurrency as posing a major challenge. She said legislation that the Committee approved in response to the GameStop occurrence earlier in the year, including the Short Sale Transparency and Market Fairness Act and bills related to gamification, payment for order flow, and market makers trading ahead of clients.

Ranking Member Patrick McHenry (R-NC) said Chairman Gensler has made concerning and contradictory statements regarding cryptocurrency. He explained Gensler has said there was a need for additional legislation regulating digital assets, but later said there was a great deal of clarity in the law. He

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called for Congress to pass clear guidelines that will not allow the SEC to change the law by interview or comment, and he announced the introduction of the [Clarity for Digital Tokens Act](#), which he said would bring legislative clarity to digital asset projects. He expressed concern about Gensler's commitment to transparency and lack of clear communication.

Multiple Republicans raised concerns with Chairman Gensler's statements and initiatives regarding environmental, social and governance (ESG) matters. Representative Frank Lucas (R-OK) noted companies are at various stages of climate reporting and disclosure, and he asked if there is concern that environmental reporting will hurt smaller businesses. Gensler commented some reporting will be easier to do sooner. Lucas asked about the level of expertise in the SEC regarding climate change. Gensler said they are working with agencies such as the EPA.

Representative David Scott (D-GA) asked what the SEC is doing to protect investors from events like the GameStop and Robinhood event last year. He asked what punitive measures Congress should put in place to ensure events like this do not happen again. Gensler responded that the GameStop events raise numerous issues, and the SEC is working on three projects including shortening the clearing cycle. Representative Sean Casten (D-IL) expressed concern over the gamification of the markets by applications like Robinhood and he asked if the SEC is investigating this issue. Gensler responded in the affirmative and he added the issue of the day is how algorithms are being used to optimize revenue for trade platforms.

Representative Carolyn Maloney (D-NY) stated Chairman Gensler has called cryptocurrency a highly speculative asset class. She asked if cryptocurrency should be treated like a security. Gensler responded that many of these tokens are saying to the public, give us your money and our group of scientists will build a token that could provide a big reward in the future. He said companies should come speak to the SEC on this issue, and he stressed he is focused on protecting investors from fraud. Maloney asked if the SEC has all the authority they need to regulate cryptocurrencies if needed. Gensler responded statutes are clear, but he added he would be happy to work with Congress to fill the gaps in this regulatory space.

Representative Ted Budd (R-NC) reported China has been on the warpath against cryptocurrency since 2013, and he asked if Chairman Gensler supports an outright ban on cryptocurrency like was implemented in China. Gensler responded his approach will be different from China. Budd asked if the SEC is interested in implementing a full ban. Gensler responded in the negative, but he stressed this would be up to Congress in the end. He added many of these tokens meet the standard of being a security. Budd asked if Chairman Gensler will commit to balancing any changes with the impact these changes will have on investors. Gensler responded in the affirmative. Budd asked where the SEC will provide additional guidance rather than enforcement.

Republican members also expressed opposition to calls to ban the payment for order flow model. Representative Roger Williams (R-TX) stressed the need to allow public companies to innovate and he

lauded the creation of the PFOF model which has made zero commission trading possible. He added studies have shown PFOF has created a price improvement of over \$3.7 billion for investors. Gensler said this is an improvement based on the national best bid and offer, which he stated does not reflect the full market. Representative Ann Wagner (R-MO) noted Gensler had said a ban for payment for order flow is on the table. She asked for an explanation of what this policy would achieve. Gensler said the core principle of efficient, competitive markets needs to be enhanced. Representative John Rose (R-TN) asked when the SEC staff will share their report on payment for order flows. Gensler said they will have it out as soon as possible. He discussed the importance of order competition.

Representative David Kustoff (R-TN) asked what Chairman Gensler meant when he said Chinese companies need to “open their books.” Gensler responded that under the Sarbanes-Oxley Act companies’ auditors needed to open their books for the PCAOB. He stated after the passage of this law two jurisdictions in the world have not complied with this standard: China and Hong Kong. Gensler explained many of these companies are headquartered in the Cayman Islands but do most of their business in China. Representative Brad Sherman (D-CA) thanked the Chairman for his work on the Holding Foreign Companies Accountable Act. He noted Gensler expressed support for shrinking the amount of time for U.S. listed foreign companies to provide information to ensure their audit is conducted accurately. He asked if a two-year timeframe works for ensuring foreign companies in U.S. markets have sufficient audits. Gensler said he is supportive of shrinking the timeframe from 3 to 2 years.

Representative David Kustoff (R-TN) recalled Chairman Gensler has stated he asked his staff to work on new reporting requirements for Special Purpose Acquisition Companies (SPACs). He asked if these recommendations have been received yet. Gensler responded he has received preliminary recommendations but no rule.

Following the hearing, Ranking Member McHenry sent a [letter](#) to Chairwoman Waters calling for a hearing with all of the SEC commissioners no later than April 2022.

## Senate Banking Committee Holds Hearing on HUD, Commerce Nominees

### *Key Point:*

- *Chairman Brown criticized Republicans as engaging in “McCarthyism” regarding OCC nominee Saule Omarova.*

On October 7, the Senate Banking Committee held a [hearing](#) to consider the following nominations:

- Mr. Matthew Axelrod, to be Assistant Secretary of Commerce
- Ms. Alanna McCargo, to be President, Government National Mortgage Association, Department of Housing and Urban Development
- Mr. James Arthur Jemison II, to be Assistant Secretary of Housing and Urban Development
- Mr. Mark Colon, to be Assistant Secretary of Housing and Urban Development

In his [opening statement](#), Chairman Sherrod Brown (D-OH) criticized Republicans for comments regarding Saule Omarova, the nominee to serve as Comptroller of the Currency. He asserted:

Until yesterday, I thought we all recognized that McCarthyism has no place in our democratic society. Any American citizen who fled communist repression – whether FDIC Chair Jelena McWilliams or OCC nominee Saule Omarova – should be lauded for her courage and her conviction. Anyone who hears Professor Omarova’s story of life in the Soviet Union will understand how offensive the attacks on her character are. I have faith that my colleagues, on BOTH sides of the aisle, will reject these modern-day “red scare” tactics.

Ranking Member Toomey raised concerns that the HUD nominees “may be ill-suited to be good stewards of these taxpayer dollars.

On October 9, Senator Toomey released a [letter](#) to Professor Omarova requesting a copy of her thesis, “Karl Marx’s Economic Analysis and the Theory of Revolution in The Capital,” which she authorized while studying at Moscow State University.

### **Treasury Department Releases Climate Action Plan**

*Key Point:*

- *The action plan establishes priority areas for Treasury efforts to related to climate resilience and adaptive capabilities.*

On October 7, the Treasury Department released its [Climate Action Plan](#) as directed by Section 211 of [Executive Order 14008](#).

As noted in a [press release](#):

The Climate Action Plan establishes five priority action areas that will be focused on agency work and initiatives to strengthen and build upon Treasury’s climate resilience and adaptive capabilities:

- Rebuild programs and capabilities that may have atrophied or stagnated in recent years;
- Address climate change impacts and vulnerabilities across the range of Departmental operations, including administrative, manufacturing, and law enforcement activities;
- Ensure a climate-focused approach to managing Treasury’s real property portfolio footprint;
- Enable procurement management to fully consider climate change realities; and
- Provide, measure, and account for a financial investment approach appropriate to the Department’s climate objectives.

## Upcoming Hearings and Meetings

### October 12

**Housing:** The House Financial Services Committee’s Subcommittee on Housing, Community Development and Insurance will hold a hearing entitled, “Zoned Out: Examining the Impact of Exclusionary Zoning on People, Resources, and Opportunity.”

### October 13

**Artificial Intelligence:** The House Financial Services Committee’s Task Force on Artificial Intelligence will hold a hearing entitled, “Beyond I, Robot: Ethics, Artificial Intelligence, and the Digital Age.”

**SEC Open Meeting:** The SEC will hold an open meeting to consider “whether to re-open the comment period for Listing Standards for Recovery of Erroneously Awarded Compensation, Release No. 33-9862 (Jul. 1, 2015), 80 FR 41143 (Jul. 14, 2015), and issue additional requests for comment on the proposed implementation of Section 10D of the Securities Exchange Act of 1934, as added by Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.”

### October 14

**Cashless Economy:** The House Financial Services Committee’s Subcommittee on Oversight and Investigations will hold a hearing entitled, “Cashed Out: How a Cashless Economy Impacts Disadvantaged Communities and Peoples.”

### October 20

**International Financial Institutions:** The House Financial Services Committee will hold a hearing entitled, “The State of the International Financial System and U.S. Participation in the International Financial Institutions.”

### October 21

**Markup:** The House Financial Services Committee hold a markup of pending legislation.

**Global Markets Advisory Committee:** The CFTC will hold a meeting of its Global Markets Advisory Committee. The agenda for the meeting includes presentations regarding the recent stresses in the U.S. Treasury market and proposals for Treasury market reforms to mitigate against future stresses. The GMAC will also hear presentations related to the implementation of recent Dodd-Frank Act reforms, including issues related to (1) swap data reporting; (2) uncleared margin; and (3) swap dealer capital substituted compliance.

**October 26**

**China:** The House Financial Services Committee’s Subcommittee on Investor Protection, Entrepreneurship and Capital Markets will hold a hearing entitled, “Taking Stock of ‘China, Inc.’: Examining Risks to Investors and the U.S. Posed by Foreign Issuers in U.S. Markets.”

**CFPB:** The House Financial Services Committee will hold a hearing entitled “Bringing Consumer Protection Back: A Semi-Annual Review of the Consumer Financial Protection Bureau.”

For more information about financial services issues you may email [Joel Oswald](#), [Mablet Makonnen](#), or [Alex Barcham](#).

**ENERGY & ENVIRONMENT****Biden Revokes Trump Changes to National Monuments***Key Point:*

- *President Biden took another action to rescind Trump Administration policies by restoring two national monuments to their original sizes, and by reimposing conservation restrictions on an ocean monument located off the New England coast.*

Today, President Biden signed proclamations reestablishing boundaries and protections for the Bears Ears, Grand Staircase-Escalante, and Northeast Canyons and Seamounts National Monuments. These protected areas were established under the “Antiquities Act of 1906” ([54 U.S.C. 320301-320303](#)). The Antiquities Act authorizes the President to “declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments.”

As described in a [fact sheet](#) issued by the White House, the President’s actions:

- Restore “the Bears Ears National Monument to the boundaries established by President Obama on December 28, 2016 and retain[] protections for an additional 11,200 acres added by President Trump in 2017.”
- Restore the “Grand Staircase-Escalante National Monument to the boundaries that were in place on January 20, 2017.”
- Restore “protections to the Northeast Canyons and Seamounts Marine National Monument, as established by President Obama on September 15, 2016.”

On December 4, 2017, President Trump issued proclamations reducing the size of the Bears Ears and Grand Staircase-Escalante National Monuments. On June 5, 2020, Trump issued a proclamation modifying the management of the Northeast Canyons and Seamounts Marine National Monument, eliminating restrictions on commercial fishing.

## Upcoming Hearings Events

### October 12

***Energy and Ancillary Services:*** The Federal Energy Regulatory Commission (FERC) will hold the second of a two part [technical conference](#) on “energy and ancillary services markets administered by Regional Transmission Organizations and Independent Systems Operators”. Participants will discuss “potential energy and ancillary services market reforms...”

***National Coal Council:*** The Department of Energy’s Office of Fossil Energy and Carbon Management will hold a [virtual meeting](#) of the National Coal Council to address “advanced markets for value-added products from coal”.

### October 12-15

***Hazardous Materials Research and Development:*** The Pipeline and Hazardous Materials Safety Administration’s (PHMSA) Office of Hazardous Materials Safety (OHMS) will hold a [forum](#) on “Research, Development & Technology”. Forum participants will “present the results of recently completed projects, brief new project plans, and obtain stakeholder input on the direction of current and future research projects on topics including mitigation of climate change, risk management and mitigation, packaging integrity, emerging technology, and technical analysis to aid risk assessment.”

### October 13

***Offshore Oil and Gas Infrastructure Legislation:*** The House Natural Resources Committee [announced](#) plans to mark up two bills addressing offshore oil and natural gas infrastructure: the “Offshore Pipeline Safety Act” ([H.R. 2643](#)), which would “require the Bureau of Safety and Environmental Enforcement to further develop, finalize, and implement updated regulations for offshore oil and gas pipelines to address long-standing limitations regarding its ability to ensure active pipeline integrity and address safety and environmental risks associated with decommissioning; and the “Offshore Accountability Act” ([H.R. 570](#)), which would “require operators of offshore oil and gas facilities to report failures of critical systems to the Secretary of the Interior”.

### October 14

***Electric Quarterly Report Requirements:*** FERC will hold a [technical conference](#) “to provide a forum for Commission staff, filers, and data users to discuss potential changes to the current Electric Quarterly Report (EQR) data fields.”



***Manufacturing Competitiveness:*** The House Energy and Commerce Committee’s Consumer Protection and Commerce Subcommittee will hold a [hearing](#) on “Investing in American Jobs: Legislation to Strengthen Manufacturing and Competitiveness.”

***Offshore Oil and Gas Infrastructure:*** The House Natural Resources Committee’s Energy and Mineral Resources Subcommittee will hold a [hearing](#) titled “Impacts of Abandoned Offshore Oil and Gas Infrastructure and the Need for Stronger Federal Oversight”.

### **October 19**

***Nominations:*** The Senate Energy and Natural Resources Committee will hold a [hearing](#) on the following nominations: Willie Phillips, Jr. to be a Member of FERC; Brad Crabtree to be Assistant Secretary of Energy for Fossil Energy and Carbon Management; and Charles Sams III to be Director of the National Park Service.

### **October 20**

***Pipeline Safety Policy:*** The Pipeline and Hazardous Materials Safety Administration (PHMSA) will convene a [meeting](#) of its Gas Pipeline Advisory Committee (GPAC) and its Liquid Pipeline Advisory Committee (LPAC). The meeting will include a discussion of “a variety of policy issues and topics relevant to both gas and liquid pipeline safety.”

### **October 21**

***FERC Open Meeting:*** FERC will hold its monthly [open meeting](#).

***Pipeline Safety Regulatory Updates:*** PHMSA will convene a meeting of its GPAC and LPAC. The meeting will be to discuss the “Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments” [Notice of Proposed Rulemaking \(NPRM\)](#), which was published on January 15, 2021. The NPRM would: “incorporate by reference more than 20 consensus standards into the Federal pipeline safety regulations”; and “make non-substantive corrections to clarify regulatory language in certain provisions.”

### **November 19**

***Greenhouse Gas Emissions of Natural Gas Facilities:*** FERC will hold a [technical conference](#) “to discuss methods natural gas companies may use to mitigate the effects of direct and indirect greenhouse gas emissions resulting from Natural Gas Act sections 3 and 7 authorizations.” The [agenda](#) includes panel discussions on: “The Level of Mitigation for a Proposed Project’s Reasonably Foreseeable Greenhouse Gas Emissions”; “Types of Mitigation”; and “Compliance and Cost Recovery of Mitigation”.

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

## **TRADE**

### **USTR Katherine Tai Speaks at Organisation for Economic Co-operation and Development (OECD) Meeting**

*Key Point:*

- USTR Tai chaired an OECD meeting discussing best practices on linking trade and labor commitments in free trade agreements, leveraging trade, addressing labor risks in global supply chains, and challenges posed by non-market economies.

USTR Tai chaired a meeting of trade ministers at an OECD meeting on October 6 while Secretary of State Anthony Blinken chaired the OECD meeting at the ministerial level. The prevailing discussion was about non-market economic trade challenges posed by China. In addition, Tai emphasized in a speech the Biden Administration's goal of maintaining the U.S.'s strong relationship with France. World Trade Organization (WTO) reforms were a significant topic between the U.S. and Korea.

### **Comments Requested on Targeted Exclusions of Products of China Subject to Section 301 Tariffs**

*Key Point:*

- USTR started a targeted tariff exclusion process for Section 301 tariffs on Chinese goods and invited public comment.

The USTR is requesting comments on a targeted tariff exclusion process for Chinese goods subject to Section 301 tariffs. More than 2,200 exclusions were previously granted under the Trump Administration. Most exclusions expired by December 31, 2020, with only 549 being granted extensions. The USTR will evaluate the possible reinstatement of each exclusion on a case-by-case basis. The focus of the evaluation will be whether the product remains available only from China and how the USTR's action on an exclusion would impact U.S. interests.

The [public comment period](#) will last from October 12 through December 1.

### **President Biden and Chinese President Xi Jinping Plan Virtual Meeting**

*Key Point:*

- President Joe Biden and Chinese President Xi Jinping will have a virtual meeting before the end of the year.

During a call between White House National Security Adviser Jake Sullivan and Senior Chinese Foreign Policy Adviser, Yang Jiechi, in Zurich, a future virtual between both Presidents was announced. This announcement comes as the Biden Administration pledged this week to hold Beijing accountable on their phase-one trade agreement commitments and China has increased their presence in Taiwan.

*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.*