

December 3, 2021

Washington Update

This Week In Congress

House – The House passed a continuing resolution ([H.R. 6119](#)) to fund the government through February 18, 2022, which was subsequently passed by the Senate.

Senate – The Senate continued its consideration of the National Defense Authorization Act ([H.R. 4350](#)), failing to invoke cloture on a manager’s amendment. The Senate confirmed Brian Eddie Nelson to be Under Secretary of the Treasury for Terrorism and Financial Crimes, Sandra Bruce to be Inspector General of the Department of Education, and Larry Turner to be Inspector General of the Department of Labor.

Next Week In Congress

House – The House and Senate may consider legislation to raise or suspend the debt limit. The House may take up the Protecting Our Democracy Act ([H.R. 5314](#)), and the Uyghur Forced Labor Prevention Act ([H.R. 1155](#)).

Senate – The Senate is expected to continue its consideration of the National Defense Authorization Act. The Senate will also continue its consideration of pending nominations, including Jessica Rosenworcel to be Chair of the Federal Communications Commission.

TAX

Build Back Better Act Undergoing Review by the Senate Parliamentarian

Key Point:

- *The Senate Parliamentarian is currently reviewing the Build Back Better Act to ensure all provisions comply with the Byrd Rule.*

Following passage of the Build Back Better Act ([H.R. 5376](#)) by the House before the Thanksgiving, the process has begun for the Senate Parliamentarian to review the bill for Byrd Rule violations. That includes discussions with majority and minority staff, and then with a combined group making their respective cases on provisions in the bill. The Byrd Rule, in general, requires provisions have revenue impacts as their primary purpose, not merely incidental to other policy. Senate Majority Leader Schumer (D-NY) and President Biden have said they hope to have the Build Back Better Act on the Senate Floor the week of December 13, if the schedule holds. Once there is agreement in the Senate to bring the bill to floor the Senate will have to engage in mandatory debate of 30 hours. After this debate the Senate will need to complete a vote-a-rama as they have before in prior reconciliation packages. This process will allow any Senator to offer an unlimited number of amendments to alter or change the bill. In this case,

there could be over 50 amendments offered, which would then need to be voted on. After this process is completed and amendments have been voted on the Senate will take a vote on final passage of the legislation as amended through the reconciliation process, which requires only a 50-vote threshold.

Senate Democratic leaders are continuing discussions with moderate Senators, especially Senator Manchin (D-WV). Earlier this week Senate Minority Leader McConnell (R-KY) held a 40-minute meeting with Senator Manchin to discuss the Build Back Better Act, which he characterized as a “great discussion.” Senator Manchin (D-WV) also suggested he could not commit to supporting the Majority Leader’s timeline at this point. In an interview Thursday on CNN, Senator Manchin said if Majority Leader Schumer attempts to force a vote on the package to meet his December 13 deadline “I wouldn’t have any idea how I’m going to vote until I walk in.” In a different interview on CNN on Thursday, Senator Sinema (D-AZ) also did not commit to voting for the Build Back Better Act at this time. If these two Senators are not fully on board with the legislative package which makes it way to the Senate floor the majority could be looking at a legislative mess if the package fails in the Senate. However, the Majority Leader still seems confident in his proposed schedule, but it certainly remains a possibility that the schedule for Build Back Better could slip into January after the Christmas recess.

Senate Votes to Avoid a Government Shutdown

Key Point:

- *The Senate voted on Thursday to pass a continuing resolution funding the government through February 18, 2022.*

On Thursday, the Senate voted to approve a continuing resolution to fund the government through February 18, 2022, thus averting a government shutdown which would have begun at the end of the day on Friday. The measure passed by a vote 69-28. This comes after the House voted to pass the continuing resolution earlier in the day by a vote of 221-212. Representative Kinzinger (R-IL) was the only Republican to join the Democrats in voting for the passage of the continuing resolution.

Senate Republicans planned to object to unanimous consent to proceed on a vote for final passage, however after negotiations the conflicts were resolved. Senate Republicans’ opposition arose due to vaccine mandates that were put in place by the Biden Administration. Senator Roger Marshall (R-KS) led a group of Senate Republicans in offering an amendment to the continuing resolution to defund the vaccine mandate, which failed by a vote of 48-50.

Upcoming Hearings and Meetings

December 8

Panama Papers: The House Ways and Means Committee’s Subcommittee on Oversight will hold a hearing on “The Pandora Papers and Hidden Wealth.”

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

President Biden Nominates Powell for an Additional Term as Federal Reserve Chairman

Key Points:

- *President Biden will nominate Jerome Powell for an additional term as Federal Reserve Chairman.*
- *Biden will also nominate Governor Lael Brainard to serve as Vice Chair.*

On November 22, the White House announced that President Biden will nomination Federal Reserve Chairman Jerome Powell to an additional four-year term as Chairman. Powell's current term as chairman is set to expire on February 5, 2022. Powell's term as a Governor does not expire until January 31, 2028.

The White House also announced that President Biden will nominate Federal Reserve Board Governor Lael Brainard to serve as Vice Chair. Brainard has served as a Governor since June 2014. Biden reportedly considered Brainard to serve as Chair.

Senators Elizabeth Warren (D-MA), Jeff Merkley (D-OR), and Sheldon Whitehouse (D-RI) had urged Biden not to renominate Powell, arguing that he has not adequately sought to address climate change.

Senate Banking Committee Chairman Sherrod Brown (D-OH) issued a statement expressing support for confirming both nominees. Brown said he would support an expedited process for considering with both nominations, which could include nomination hearings as soon as December. Ranking Member Pat Toomey (R-PA) also issued a [statement](#) indicating that he would support Powell's renomination, but expressed reservations about Brainard's nomination as Vice Chair.

Secretary Yellen and Chair Powell Testify in the House and Senate

Key Points:

- *Secretary Yellen stressed the need to raise the debt limit in a timely manner.*
- *Republicans raised concerns that inflation remains elevated.*

This week, Treasury Secretary Janet Yellen and Federal Reserve Chairman Jerome Powell testified in the Senate Banking Committee and the House Financial Services Committee.

In her testimony, Secretary Yellen emphasized the importance of raising the debt limit in a timely manner in order to ensure the U.S. can "pay its bills on time." She also expressed support for moving forward with the Build Back Better Act and stressed the benefits of recently passed bipartisan infrastructure package.

In both hearings, Republicans raised concern over the high level of inflation in recent months. Senate Banking Committee Ranking Member Pat Toomey (R-PA) said the core personal consumption expenditure price index (PCE) is running over two percent over the last 5 years and 4.1 percent over the last year. He stated this framework seems to be a weakening of the Federal Reserve's stance toward stable pricing and he asked how long inflation will have to run above the two percent target for the Federal Reserve to say it is no longer transitory. Powell responded transitory has different meanings to different people and he stressed transitory means it will not leave a permanent mark in terms of higher inflation. Toomey stressed the economy is in a full-blown expansion and yet the Federal Reserve will continue to purchase \$35 billion in mortgage-backed securities (MBS) during December alone. He urged the Chairman to reconsider this action. Ranking Member Patrick McHenry (R-NC) asserted that bad fiscal policy decisions made by Democrats are also inhibiting the economy. He expressed concern over high unemployment numbers and low labor force participation, and he stated all of these issues are caused by bad fiscal policy put in place by a Democratic Congress. He noted many small businesses are having a difficult time finding qualified workers, and prices continue to rise. He expressed concern over rising inflation and the recent rise in the consumer price index (CPI). He added Democrats would like to blame these high prices on some outside force, but their policies are directly to blame for these price spikes.

Senator Thom Tillis (R-NC) asked if Congress needs to provide a solution to facilitate the London Inter-Bank Offered Rate (LIBOR) transition. Yellen and Powell responded in the affirmative.

Representatives Rashida Tlaib (D-MI) and Alexandria Ocasio Cortez (D-NY) called on the regulators to do more to address the threat of climate change. Ocasio Cortez asked why the Financial Stability Oversight Council's (FSOC) annual report did not include climate policy recommendations. Yellen responded FSOC's mission is to identify threats to the U.S. economy. She explained Treasury is also working on policies that will address climate change. Ocasio Cortez asked if the U.S. is behind the rest of the world in mitigating climate change's threat to the economy. Powell said he is focused on the regulation of financial institutions and financial stability more broadly. Ocasio Cortez asked if Yellen supports phasing out new investments in fossil fuel supplies. Yellen said FSOC's mission is safety and soundness of financial institutions.

Federal Regulators Release Joint Statement on Crypto-Asset Policy Initiative and Next Steps

Key Points:

- *The statement indicated that in 2022 the agencies will work on to provide clarity on expectations for crypto asset custody and the issuance of stablecoins.*

On November 23, the Federal Reserve Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) issued a [joint statement](#) summarizing their interagency "policy sprints" focused on crypto-assets and providing a roadmap of future work related to crypto-assets. The statement noted that the policy sprints focused on:

Developing a commonly understood vocabulary using consistent terms regarding the use of crypto-assets by banking organizations.

Identifying and assessing key risks, including those related to safety and soundness, consumer protection, and compliance, and considering legal permissibility related to potential crypto-asset activities conducted by banking organizations.

Analyzing the applicability of existing regulations and guidance and identifying areas that may benefit from additional clarification.

The statement also noted:

Throughout 2022, the agencies plan to provide greater clarity on whether certain activities related to crypto-assets conducted by banking organizations are legally permissible, and expectations for safety and soundness, consumer protection, and compliance with existing laws and regulations related to:

- Crypto-asset safekeeping and traditional custody services.
- Ancillary custody services.
- Facilitation of customer purchases and sales of crypto-assets.
- Loans collateralized by crypto-assets.
- Issuance and distribution of stablecoins.
- Activities involving the holding of crypto-assets on balance sheet.

SEC Adopts Final Rules Implementing the Holding Foreign Companies Accountable Act

Key Points:

- *Under the final rule, certain foreign issuers will be required to provide the SEC with disclosures regarding their auditors and ownership.*
- *Issuers which do not comply with PCAOB requirements for three consecutive years will be subject to a trading prohibition in the U.S.*

On Thursday, the Securities and Exchange Commission (SEC) adopted [final rules](#) implementing the submission and disclosure requirements in the Holding Foreign Companies Accountable Act (HFCAA). As noted in a press release, “The rules apply to registrants the SEC identifies as having filed an annual report with an audit report issued by a registered public accounting firm that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board (PCAOB) is unable to inspect or investigate (Commission-Identified Issuers).”

An SEC [fact sheet](#) explained that Commission-Identified Issuers will have to disclose the following:

- During the period covered by the form, the registered public accounting firm has prepared an audit report for the issuer;

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- The percentage of the shares of the issuer owned by governmental entities in the foreign jurisdiction in which the issuer is incorporated or otherwise organized;
- Whether governmental entities in the applicable foreign jurisdiction with respect to that registered public accounting firm have a controlling financial interest with respect to the issuer;
- The name of each official of the Chinese Communist Party who is a member of the board of directors of the issuer or the operating entity with respect to the issuer; and
- Whether the articles of incorporation of the issuer (or equivalent organizing document) contains any charter of the Chinese Communist Party, including the text of any such charter.

The fact sheet further explained:

The HFCAA requires the SEC to prohibit the trading of the securities of certain Commission-Identified Issuers on a national securities exchange or through any other method that is within the jurisdiction of the SEC to regulate, including through over-the-counter trading. As a result, the SEC will impose an initial trading prohibition on a registrant as soon as practicable after it is conclusively identified as a Commission-Identified Issuer for three consecutive years. If the SEC ends the initial trading prohibition and, thereafter, the registrant is again determined to be a Commission-Identified Issuer, the SEC will impose a subsequent trading prohibition on the registrant for a minimum of five years.

Upcoming Hearings and Meetings

December 7

Disaster Recovery: The House Financial Services Committee’s Subcommittee on Oversight and Investigations will hold a hearing entitled, “Ensuring Equitable Delivery of Disaster Benefits to Vulnerable Communities and Peoples: An Examination of GAO’s Findings of the CDBG Program.”

Nominations: The Senate Banking Committee will hold a hearing to consider the nominations of Parisa Salehi to be Inspector General of the Export-Import Bank, and Brian Michael Tomney to be Inspector General of the Federal Housing Finance Agency.

December 8

Digital Assets: The House Financial Services Committee will hold a hearing entitled, “Digital Assets and the Future of Finance: Understanding the Challenges and Benefits of Financial Innovation in the United States.” The witnesses at the hearing will be Circle CEO Jeremy Allaire, FTX CEO Sam Bankman-Fried, Bitfury CEO Brian Brooks, Paxos CEO Chad Cascarilla, Stellar Development Foundation CEO Denelle Dixon, and Coinbase CEO Alesia Haas.

December 9

Diversity: The House Financial Services Committee’s Subcommittee on Diversity and Inclusion will hold a hearing entitled, “A Review of Diversity and Inclusion Performance at America’s Large Investment Firms.”

Disaster Recovery: The Senate Banking Committee will hold a hearing entitled “Disaster Recovery Assistance - Authorization of the Community Development Block Grant – Disaster Recovery Program.” The witnesses at the hearing will be Michael A. Sprayberry, Senior Advisor for Emergency Management, Hagerty Consulting; and Matt Mayer, President, Opportunity Ohio.

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

ENERGY & ENVIRONMENT

Interior Department Releases Report on Federal Oil and Natural Gas Leasing

Key Points:

- *Last Friday, the Department of the Interior issued its “Report on the Federal Oil and Gas Leasing Program”.*
- *In Executive Order 14008, President Biden directed the Department to “pause new oil and natural gas leases on public lands or in offshore waters pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices in light of the Secretary of the Interior’s broad stewardship responsibilities over the public lands and in offshore waters, including potential climate and other impacts associated with oil and gas activities on public lands or in offshore waters.”*

On November 26, the Department of the Interior released its long-awaited [report](#) on oil and gas leasing on federal lands and offshore. The report found that the “Federal oil and gas program... fails to provide a fair return to taxpayers, even before factoring in the resulting climate-related costs...; inadequately accounts for environmental harms to lands, waters, and other resources; fosters speculation by oil and gas companies to the detriment of competition and American consumers; extends leasing into low potential lands that may have competing higher value uses; and leaves communities out of important conversations about how they want their public lands and waters managed.”

The Department’s [press release](#) states that the “report makes a number of specific recommendations, including adjusting royalty and bonding rates, prioritizing leasing in areas with known resource potential, and avoiding leasing that conflicts with recreation, wildlife habitat, conservation, and historical and cultural resources....”

The report includes recommendations to the Bureau of Land Management (BLM) to:

- “begin to adjust royalties for competitive leases offered in individual lease sales and initiate a rulemaking to establish a higher minimum royalty for onshore oil and gas leases”;
- “initiate rulemaking to increase the minimum bid to discourage speculators and to provide a better return to the taxpayer”;
- “initiate a rulemaking in order to increase rental rates for future lease sales”;

- “increase minimum bond amounts and set the appropriate levels taking into consideration changes in technology, the complexity and depth of modern wells, inflation, and the risk of abandonment”;
- “ensure that oil and gas is not prioritized over other land uses, consistent with BLM’s mandate of multiple-use and sustained yield...[and] carefully consider what lands make the most sense to lease in terms of expected yields of oil and gas, prospects of earning a fair return for U.S. taxpayers, and conflicts with other uses, such as outdoor recreation and wildlife habitat”;
- “evaluate operational adjustments to its leasing program that will avoid nomination or leasing of low potential lands and instead focus on areas that have moderate or high potential for oil and gas resources and which are in proximity to existing oil and gas infrastructure”;
- “consider reforms that ensure that bidders—and any subsequent proposed leaseholders or operators—are publicly identified and financially and technically qualified to develop leases”.

The report calls on the Bureau of Ocean Energy Management (BOEM) to “consider advancing alternatives to the practice of area-wide leasing, under which the entire planning area is offered with few exclusions for a lease sale”.

The report also notes that the BOEM is developing “a ‘Fitness to Operate’ standard for companies seeking to be designated as oil and gas operators and evaluate how to apply such a standard to potential new lessees or current lessees seeking to gain additional properties.”

Hearing Focuses on Parks and Outdoor Recreation

Key Points:

- *On Thursday, the Senate Energy and Natural Resources Committee held a hearing on nine bills, including legislation that would expand access to parks and outdoor recreation.*
- *In a statement issued following the hearing, Chairman Joe Manchin (D-WV) announced plans to develop “a first-ever bipartisan recreation package”.*

On December 2, the Senate Energy and Natural Resources Committee held a [hearing](#) on proposed legislation related to parks, outdoor recreation and public lands, including:

- The “Simplifying Outdoor Access for Recreation Act” ([S. 1229](#));
- The “Environmental Justice in Recreation Permitting Act” ([S. 1269](#));
- The “Federal Interior Land Media Act” ([S. 1616](#));
- The “Recreation Not Red Tape Act” ([S. 1874](#));
- The “Parks, Jobs, and Equity Act” ([S. 2258](#));
- The “Cape and Antler Preservation Enhancement Act” ([S. 2886](#));
- The “Outdoors for All Act” ([S. 2887](#));
- The “Bike Over Long-distance Trails Act” ([S. 3264](#)); and
- The “Outdoor Recreation Act” ([S. 3266](#)).

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In his [opening statement](#), Chairman Joe Manchin (D-WV) said the outdoor recreation industry employs three percent of the people in West Virginia. He noted that the COVID-19 pandemic caused employment in the outdoor recreation industry to drop 17 percent. He discussed his legislation, the “Outdoor Recreation Act”, which he noted has been endorsed by more than 20 outdoor recreation companies. He stated that all nine bills under consideration will help facilitate people’s ability to enjoy public lands and the outdoors. In a [press release](#) issued following the hearing, Manchin signaled his commitment to work on “a first-ever bipartisan recreation package.”

Ranking Member John Barrasso (R-WY), in his [opening statement](#), emphasized his support for the “Outdoor Recreation Act” as one of the bill’s co-sponsors. He argued that the bill improves recreation opportunities on federal land while also facilitating greater access. He remarked that states like Wyoming will benefit significantly because the bill will improve infrastructure and help keep the water and environment clean while providing more opportunities for people to use public lands.

Overview of EPA’s Proposed Rule on Oil and Natural Gas Sector Methane Emissions

Key Points:

- *The Environmental Protection Agency is working on a rulemaking that would control methane emissions from oil and natural gas industry sources.*
- *The agency held a public hearing this week to receive feedback on the proposal, which was published on November 15.*

On November 2, the Environmental Protection Agency (EPA) released the pre-publication text of the proposed rule titled “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review”, and published the [Notice of Proposed Rulemaking \(NPRM\)](#) in the Federal Register on November 15. The rule includes two key components: updated and expanded regulations of methane emissions from new sources, and standards for State implementation and enforcement of rules governing existing sources. The NPRM also: updates the Code of Federal Regulations to reflect the congressional repeal of a Trump Administration rule on oil and gas sector methane emissions; addresses environmental justice concerns; and lays out the potential parameters of a “supplemental” rulemaking that the agency plans to promulgate in 2022.

The EPA delineates the scope of the rule’s application as: “for crude oil...covering operations from the well to the point of custody transfer at a petroleum refinery... [and] for natural gas...all operations from the well to the local distribution company custody transfer station commonly referred to as the ‘city-gate’. Elements of the proposed rulemaking include:

- ***New, Modified, and Reconstructed Sources:*** The proposed rule would establish “comprehensive standards of performance for GHG emissions (in the form of methane limitations) and [volatile organic compound] emissions for new, modified, and reconstructed sources in the Crude Oil and Natural Gas source category, including the production, processing,

transmission and storage segments.” The NPRM specifies that the standards would apply to “sources that commenced construction, modification, or reconstruction after November 15, 2021.”

- ***Existing Sources:*** The EPA proposes federally directed regulation of methane emissions from existing oil and natural gas sources for the first time. Under the proposed rule, the agency would establish emissions guidelines “containing presumptive standards...to reduce methane emissions from designated [existing] facilities within the Crude Oil and Natural Gas source category.” The EPA would require States “to submit...plans that establish standards of performance for designated facilities and provide for implementation and enforcement of” methane emissions control requirements.
- ***Repeal of Trump Administration Rule:*** The NPRM would also update current regulations to reflect enactment of the Congressional Review Act resolution ([S.J.Res. 14, P.L. 117-23](#)) to rescind the [final rule](#) titled “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review”. The NPRM notes that the regulatory requirements repealed by the Trump Administration’s rule were reinstated upon the signing of the joint resolution into law, “even though the EPA has not yet updated the [Code of Federal Regulations] text to reflect them.”
- ***Environmental Justice:*** The NPRM notes the work of the EPA to consider “in the development of this proposed rulemaking process...the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income.” The NPRM includes provisions to address environmental justice: (1) an initiative to “expand leak detection programs already in effect for new sources to include known sources of large emission events and proposing to require more frequent monitoring at sites with more emissions”; and (2) a proposal to “require that States demonstrate they have undertaken meaningful outreach and engagement with overburdened and underserved communities...”
- ***Supplemental Rulemaking:*** The EPA signals in the NPRM its intent to publish a “supplemental proposal”. This second rulemaking would potentially address: “(1) Ways to mitigate methane from abandoned wells, (2) measures to reduce emissions from pipeline pigging operations and other pipeline blowdowns, (3) ways to minimize emissions from tank truck loading operations, and (4) ways to strengthen requirements to ensure proper operation and optimal performance of control devices.” The EPA also states that the supplemental rulemaking, expected in 2022, “may revisit and refine certain provisions of this proposal in response to information provided by the public.”

The EPA held a [virtual public meeting](#) on the proposed regulations on November 30 and December 1. Public comments on the NPRM are due by January 14, 2022. The EPA will likely publish the final rule some time in 2022, as well as an NPRM for the supplemental rule.

For more information on pending and upcoming regulations in this area, see “[Biden Administration Moves Forward with Methane Regulations](#)”.

Upcoming Hearings Events

December 7

NTSB Investigation of Offshore Pipeline Strike: The National Transportation and Safety Board (NTSB) will hold a [virtual meeting](#) to assess a “hazardous liquid pipeline strike and subsequent explosion and fire aboard dredging vessel Waymon Bond outside Corpus Christi, TX.”

Pipeline Reliability: The House Energy and Commerce Committee’s Energy Subcommittee will hold a [hearing](#) entitled “Securing our Energy Infrastructure: Legislation to Enhance Pipeline Reliability”. The hearing will consider the “Energy Product Reliability Act” ([H.R. 6084](#)), which would require “the Federal Energy Regulatory Commission to certify an Energy Product Reliability Organization which shall, subject to Commission review, establish and enforce energy product reliability standards...” A Committee [press release](#) states that Federal Energy Regulatory Commission (FERC) Chairman Richard Glick and Deputy Secretary of Energy David Turk will testify.

PFAS: The House Science Committee’s Environment Subcommittee and Research and Technology Subcommittee will hold a [hearing](#) entitled “Forever Chemicals: Research and Development for Addressing the PFAS Problem”. Scheduled witnesses are: Dr. Elsie Sunderland, Gordan McKay Professor of Environmental Chemistry, Harvard John A. Paulson School of Engineering and Applied Sciences, Harvard T.H. Chan School of Public Health; Abigail Hendershott, Executive Director, Michigan PFAS Action Response Team (MPART); Amy Dindal, Director of Environmental Research and Development, Battelle Memorial Institute; and Dr. Peter Jaffé, Professor, Department Civil and Environmental Engineering, Princeton University.

December 13

Environmental Management Advisory Board (EMAB): The Department of Energy will hold an [open virtual meeting](#). The tentative agenda includes: “Reading of Public Comment”; “Remarks from EM leadership”; “EM Regulatory and Policy Affairs Update”; “Ethics Briefing for EMAB Members”; and “Board Business”.

December 16

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

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](#).

HEALTH

CMS Vaccine Mandated Halted

Key Points:

- *This week, two federal district courts granted preliminary injunctions preventing enforcement of the Centers for Medicare and Medicaid Services (CMS) vaccine mandate for Medicare and Medicaid providers nationwide.*
- *CMS has issued a memo indicating it will not enforce the mandate while injunctions are in effect.*

Two federal district courts ruled this week creating a nationwide preliminary injunction against the Center for Medicare and Medicaid Services (CMS) vaccine mandate [interim final rule](#) that applied to regulated Medicare and Medicaid providers and suppliers. The first phase of rule was to be implemented by December 6 with full compliance required by January 4, 2022.

On November 29, the federal District Court for the Eastern District of Missouri granted a preliminary injunction prohibiting CMS from implementing or enforcement the vaccine mandate pending a trial on the merits or further court action. The order was limited to the 10 states that were parties to the lawsuit: Alaska, Arkansas, Iowa, Kansas, Missouri, Nebraska, New Hampshire, North Dakota, South Dakota, and Wyoming. The following day, the federal District Court for the Western District of Louisiana also issued a preliminary injunction prohibiting CMS's enforcement of the mandate. The order extended this injunction nationwide.

On December 2, CMS issued a [memo](#) to State Survey Agency Directors indicating it will not enforce the rule while the court-ordered injunctions are in place prohibiting enforcement. It notes health facilities may choose to voluntarily comply with the vaccine mandate.

HHS Releases Funds to Rural Providers

Key Points:

- *The Departments of Health and Human Services released \$7.5 billion in American Rescue Plans funds to help support rural health care providers.*
- *Funds were distributed to over 400,000 providers which each receiving an average of \$170,700.*

On November 23, the Department of Health and Humans Services announced it had released \$7.5 billion in American Rescue Plan funds to support rural providers that serve Medicaid, Children's Health Insurance Program (CHIP), and Medicare beneficiaries. Providers received an average of \$170,700 with payments ranging from \$500 to \$43 million. Over 40,000 providers across the country received payments.

To expedite the distribution process, payments were based on Medicare, Medicaid, and CHIP claims for services to rural beneficiaries from January 1, 2019 through September 30, 2020. This time period was

chosen to take into account pre-pandemic and pandemic operations. Payments were generally based on Medicare reimbursements rates regardless of type of beneficiary that received services.

In addition, HHS has also opened applications for the Phase 4 Provider Relief Funds distribution. HHS will be distributing an additional \$17 billion. Rural providers are also eligible to apply for these funds. Applications closed on November 3 and distributions have not yet been announced. The Phase 4 funds will be aimed at specifically helping smaller providers and those that serve lower income patients.

Upcoming Hearings and Meetings

December 8

Research: The House Energy and Commerce Committee will hold a hearing on “The Future of Biomedicine: Translating Biomedical Research into Personalized Health Care.”

December 9

Drug Pricing: The House Oversight and Reform Committee will hold a hearing on “Unsustainable Drug Prices: Findings from the Committee's Drug Pricing Investigation and the Need for Structural Reforms.”

December 9-10

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

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

TRADE

U.S. Reaches Digital Services Trade Agreements with Turkey and India

Key Point:

- *The U.S. reached agreements with Turkey and India on digital services taxes, following the previous Section 301 investigations.*

On November 22,, the Office of U.S. Trade Representatives (USTR) [announced](#) Turkey will agree to the same digital service tax deal that the U.S. has reached with France, the U.K., Austria, Spain, and Italy. According to the agreement, “Turkey will remove its existing Digital Service Taxes (DSTs) prior to the entry into force of Pillar 1 of Organization for Economic Cooperation and Development’s (OECD) agreement. DST liability that U.S. companies accrue during the interim period will be creditable against future income taxes accrue under Pillar 1 of the OECD agreement.” In return, the U.S. will terminate the duties adopted during the DST Section 301 investigation.

Additionally, on November 24, the USTR [announced](#) India has agreed to the same deal and provisions. Please find the readout of U.S. Trade Representative (USTR) Katherine Tai's participation in the U.S. – India Trade Policy Forum Meeting [here](#).

House Ways & Means Subcommittee on Trade Discusses Unfair Chinese Trade Practices

Key Point:

- *The House Ways & Means Subcommittee on Trade held a hearing on “Supporting U.S. Workers, Businesses, and the Environment in the Face of Unfair Chinese Trade Practices.”*

Chairman Earl Blumenauer (D-OR) and Ranking Member Vern Buchanan (R-FL) discussed strategies to support American workers across industries such as textiles, steel, semiconductors, fishing, and small businesses. Democrats and Republicans acknowledged room for bipartisan opportunity working with the USTR. The main source of contention centered around what components of previous tariffs should stay in place, if the U.S. should join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and best strategies to give U.S. businesses an edge over China.

Witnesses present were from National Council of Textile Organizations, United Steelworkers, China Ocean Institute, and Akin Gump (law firm). Key topics discussed were: (1) Limiting Chinese Trade; (2) Section 301 and Section 232 Tariffs; (3) Chinese Economic Expansion; (4) Chinese International Influence; (5) U.S. Economic Response; (6) Human Rights and Forced Labor; (7) American Economic Strength; (8) De Minimis, (9) Eliminating Global Market Distortions to Protect American Jobs Act, (10) Fishery Subsidies, (10) Priorities, and (11) CPTPP. Highlighted legislation was U.S. Innovation and Competition (CHIPS) Act ([S. 1260](#)), Uyghur Forced Labor Prevention Act ([H.R. 1155](#)), Information Transparency & Personal Data Control Act ([H.R. 2013](#)), [‘U.S. Trade Leadership in the Indo-Pacific and China Act.’](#)

Support Growing for Inclusion of GSP and MTB in China Bill

Key Point:

- *The House Ways & Means Trade Subcommittee Chairman expressed support for including the Generalized System of Preferences (GSP) and Miscellaneous Tariff Bill (MTB) reforms in the U.S. Innovation and Competition Act (USICA).*

In his opening comments in the Trade Subcommittee hearing, Chairman Ed Blumenauer (D-OR) called for a more aggressive and assertive approach to counter China's trade practices. He stated U.S. Trade Representative (USTR) Katherine Tai has done a full review of U.S. trade policy and is taking effective action. He observed there is more to be done in U.S. trade policy, noting the Senate has passed the U.S. Innovation and Competition Act (USICA), but Chairman Blumenauer indicated his view is that the legislation is inadequate. Chairman Blumenauer stated he would be open to the Generalized System of Preferences (GSP) and Miscellaneous Tariff Bill (MTB) being included in USICA if it included strong

labor and gender-related standards for countries seeking duty-free treatment. He acknowledged businesses and Senate concerns with including such language, stating he is interested in further conversations.

There is no indication when USICA will be conferenced, suggesting it is most likely to be delayed until 2022.

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.