



December 17, 2021

Washington Update

This Week In Congress

Senate – The House and Senate passed legislation to raise the debt limit by \$2.5 trillion ([S.J. Res. 33](#)), which was signed into law by President Biden. Both chambers also passed the Uyghur Forced Labor Prevention Act ([H.R. 6256](#)). The Senate passed the National Defense Authorization Act for Fiscal Year 2022 ([H.R. 1605](#)) and the Accelerating Access to Critical Therapies for ALS Act ([H.R. 3537](#)). The Senate confirmed Rostin Behnam to be Chairman of the Commodity Futures Trading Commission, John Sherman to be Chief Information Officer at the Department of Defense, Nickolas Guertin to be Director of Operational Test and Evaluation at the Department of Defense, Thea Rozman to be Assistant Secretary of Commerce, Nicholas Burns to be Ambassador to China, Ramin Toloui to be Assistant Secretary of State, Shannon Corless to be Assistant Secretary of the Treasury, Kurt DelBene to be Assistant Secretary of Veterans Affairs, Lisa Wang to be Assistant Secretary of Commerce, Maria Louise Lago to be Under Secretary of Commerce, and several judicial and ambassadorial nominations.

House – The House passed a resolution to hold Mark Meadows in contempt of Congress for failure to comply with a subpoena from the Select Committee to Investigate the January 6th Attack on the United States Capitol. The House also passed the Combating International Islamophobia Act ([H.R. 5665](#)).

Next Week In Congress

Senate – The Senate may remain in session over the weekend to consider pending nominations. The Senate is expected to be in recess next week and meet in pro forma session. The Senate is scheduled to reconvene on January 3, 2022.

House – The House is scheduled to be in recess and meet in pro forma session. The House is scheduled to reconvene on January 10, 2022.

TAX

Build Back Better Act Not Expected to See Action Before the Holidays as Discussions Remain Ongoing Over the Size and Scope of the Bill

Key Points:

- *The Build Back Better Act is currently undergoing further review by the Senate Parliamentarian to ensure it meets Byrd Rule standards.*

- *Discussions between the White House and Senator Manchin (D-WV) remain ongoing but the package will have to wait until next year to see the Senate floor.*

The Build Back Better Act ([H.R. 5367](#)), which passed the House on November 19 by a vote of 220-213, is currently undergoing review by the Senate Parliamentarian to ensure provisions in the bill meet the longstanding Byrd Rule. As this review continues some Democratic proposals have been rejected by the Parliamentarian as not meeting the standards put forth under the Byrd Rule. For example, Democrats' proposal to include immigration reform in the legislation was rejected by the Parliamentarian earlier this week.

Due to the amount of time being taken to evaluate many of these provisions in the legislation, and ongoing discussions with moderate Democratic Senator Manchin (D-WV), it is very unlikely the bill will see legislative action until after the New Year. President Biden met with Senator Manchin earlier this week in a meeting which was not characterized as productive.

Senator Manchin has expressed a number of concerns as it relates to the legislation itself along with current economic conditions. He explained the report on the legislation issued by the Congressional Budget Office (CBO) was “sobering” and he also noted rising inflation is a concern for his constituents in West Virginia. The size of the bill has long been an issue for the moderate member of the Democratic party and significant discussion arose this week over the inclusion of an expanded Child Tax Credit (CTC) in the final text of this legislation. Additionally, President Biden released a [statement](#) on Wednesday where he noted “[m]y team and I are having ongoing discussions with Senator Manchin; that work will continue next week.” The President also reiterated in his statement that he and Senate Majority Leader Schumer (D-NY) remain committed to getting this bill to the floor as soon as possible; however, with the upcoming holiday and corresponding Congressional recess the Senate will not take up this package after the New Year, even as the Biden Administration has instructed staff to continue to work on the package during the break.

President Biden Signs Bill to Raise Debt Ceiling

Key Point:

- *President Biden signed a bill to raise the debt ceiling by \$2.5 trillion after it was passed by Congress this week.*

On Thursday, President Biden signed legislation to increase the debt ceiling by \$2.5 trillion. The Senate passed the legislation to raise the debt limit on Tuesday by a vote of 50-49 along party lines. The House voted 221-209 on Wednesday morning to approve the bill as well. Representative Kinzinger (R-IL) was the lone member to break ranks on the bill. The vote came after a measure was approved last week in the Senate in by bipartisan fashion to allow Democrats to raise the debt ceiling on a party line vote. This measure raises the debt ceiling by \$2.5 trillion and extends the ceiling into 2023, expected to be well after the 2022 midterm elections.

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

Senate Banking Committee Holds Hearing on Stablecoins

Key Points:

- *Chairman Brown expressed doubts about the benefits of stablecoins, suggesting that they have not supported financial inclusion and have been primarily used for speculation.*
- *Ranking Member Toomey released principles for future legislation regarding stablecoins. He stressed the need to avoid stifling innovation.*

On December 14, the Senate Banking Committee held a [hearing](#) entitled “Stablecoins: How Do They Work, How Are They Used, and What Are Their Risks?” Chairman Sherrod Brown (D-OH) stated that the value of digital assets has surpassed \$3 trillion, asserting that they are a systemic issue. He said digital assets and blockchain are purported to have many benefits, such as democratizing the economy, but these benefits have not yet been realized and there has been wild speculation. He contended that price volatility and high transaction fees make digital assets “useless” for payments. Brown said crypto advocates claim digital assets are superior because they are decentralized and transparent. He asserted that stablecoins are neither decentralized nor transparent, as most rely on a single centralized company to manage the reserve assets and the supply of coins. He stated that they are not transparent, as critical information is not available to the coin holders. He expressed concern that stablecoins are a potential asset bubble. He asserted that stablecoins and crypto markets are not a true alternative to the banking system, but a “mirror of the same broken system with even less accountability and no rules at all.” He said crypto advocates argue against regulation, claiming that it will harm innovation. He commended the Biden Administration for putting strong watchdogs in place at banking and market regulators, stressing the need to ensure they have the tools necessary to protect Americans.

In conjunction with the hearing, Ranking Member Pat Toomey (R-PA) released a [summary](#) of his principles to guide a future legislative framework for stablecoins:

Stablecoin issuance should not be limited to insured depository institutions.

- First, stablecoin issuers have different business models than traditional banks.
- Second, requiring all stablecoin issuers to become banks would stifle innovation.
- Third, the regulation of payments activities should create a level playing field.

Stablecoin issuers would choose from at least three regulatory regimes based on their business models:

- Operate under a conventional bank charter;
- Acquire a special-purpose banking charter designed for stablecoin providers in accordance with new legislation; or

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

- Register as a money transmitter under the existing state regime and as a money services business under FinCEN's federal regime.

All stablecoin issuers should have to adopt clear redemption policies, disclosure requirements regarding the assets backing the stablecoin, and potentially meet liquidity and asset quality requirements.

Commercial entities should be eligible to issue stablecoins, provided they choose one of these regimes.

Non-interest bearing stablecoins should not necessarily be regulated like securities.

Regulation should protect the privacy, security, and confidentiality of individuals utilizing stablecoins, including allowing customers to opt out of sharing any information with third parties.

Financial surveillance requirements under the Bank Secrecy Act should be modernized, including for existing financial institutions, in light of emerging technologies like stablecoins.

Ranking Member Toomey noted that the President's Working Group on Financial Markets (PWG) recently issued a report urging Congress to pass legislation creating a federal regulatory framework for stablecoins. He said the report did little to highlight the benefits of stablecoins, though he was glad it recognized that the decision around the regulatory framework for stablecoins lies with Congress. He emphasized that Congress should not stifle innovation. Toomey noted that his principles take a different approach than the PWG report. He said the PWG recommended that all stablecoin issuers should be insured depository institutions, which he disagrees with. He said stablecoin issuers have different business models than banks and do not present the same risks. He emphasized that a lot of innovation takes place outside of the banking system, suggesting that onerous bank regulations will impede regulation.

President Biden Announces Director of the FHFA and two CFTC Nominees; Senate Confirms Behnam as CFTC Chairman

Key Point:

- *Thompson has served as Acting Director since June 2021, when former Director Mark Calabria was removed by the President.*
- *President Biden announces his intent to nominate Summer Mersinger and Caroline Pham to fill two of the seats on the CFTC.*

On December 14, the White House [announced](#) that President Biden intends to nominate Sandra L. Thompson to serve as Director of the Federal Housing Finance Agency (FHFA). Thompson has served as Acting Director of FHFA since June 23, 2021. President Biden appointed to Thompson to replace former Director Mark Calabria, after the Supreme Court ruled that the President can remove the Director of FHFA at will.

Prior to being appointed as Acting Director, Thompson served as the Deputy Director of FHFA's Division of Housing Mission and Goals. She also previously worked for 23 years at the Federal Deposit Insurance Corporation (FDIC).

Senate Banking Committee Chairman Sherrod Brown (D-OH) issued a [statement](#) praising the nomination:

I commend the Biden Administration for nominating Sandra Thompson to lead FHFA. She has a distinguished career as a regulator and supervisor, first of our nation's banks, and more recently of the GSEs. While leading the Federal Housing Finance Agency as Acting Director, Ms. Thompson has refocused regulation of the GSEs on ensuring that they fulfill their mission to provide safe, sustainable access to housing across the country. I look forward to holding her nomination hearing soon and encourage my colleagues to support her nomination.

On December 15, the Senate confirmed Commodity Futures Trading Commission (CFTC) Acting Chairman Rostin Behnam to serve as Chairman, as well as for an additional five-year term as a Commissioner, by voice vote.

Additionally, the White House [announced](#) that President Biden intends to nominate Summer Mersinger and Caroline Pham to serve as members of the Commodity Futures Trading Commission (CFTC), filling the two Republican seats. Mersinger currently serves as Chief of Staff to Commissioner Dawn Stump. Stump's term expires on April 22, 2022 and she recently announced that she will not seek another term. Pham is a managing director at CitiGroup and previously served as counsel to former CFTC Commissioner Scott O'Malia.

Behnam and Stump are currently the only two confirmed members of the five-member commission. President Biden previously [nominated](#) Christy Goldsmith Romero and Kristin Johnson to fill the two open Democratic seats.

SEC Issues Proposed Rules Regarding Money Market Fund Reforms, 10b5-1 Trading Plans, Share Repurchases and Security-based Swaps

Key Points:

- *The SEC issued proposed rules to modify the regulations government money market funds.*
- *The Commission also issued proposed rules regarding 10b5-1 plans, share repurchase disclosures, and security-based swaps.*

On Wednesday, the SEC held an open meeting and issued proposed amendments to regulations governing money market funds (MMFs) under the Investment Company Act. The Commission agreed to put the proposed rule by a vote of 3-2, with Commissioner Hester Peirce and Elad Roisman voting in opposition.

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

Among other things, Commissioner Peirce expressed concern that the proposal will drive more money into government funds but may leave investors, issuers of commercial paper, and markets worse off. She also suggested that the Commission should propose a more principles-based rule which could allow funds to choose the best approach or combination of approaches to increase resilience. Commissioner Roisman expressed concerns with, among other issues, the proposal raising the daily and weekly liquid asset thresholds for all funds, and the relatively short, 60-day comment period.

An SEC [fact sheet](#) noted that the proposed rule would:

Increasing minimum liquidity requirements to provide a more substantial buffer in the event of rapid redemptions;

Removing the ability of money market funds to impose liquidity fees and redemption gates when they fall below certain liquidity thresholds, which would eliminate an incentive for preemptive redemptions;

Requiring certain money market funds to implement swing pricing so that redeeming investors bear the liquidity costs of their redemptions; and

Enhancing certain reporting requirements to improve the Commission's ability to monitor and analyze money market fund data.

The proposed rule will be subject to a 60-day comment period.

The SEC also approved the following items:

- Proposed amendments to Rule 10b5-1 and new disclosure regarding 10b5-1 trading arrangements and insider trading policies and procedures. The proposal was approved by a 5-0 vote. ([Fact sheet](#))
- Proposed amendments to modernize share repurchase disclosure, including more detailed and more frequent disclosure about issuer share repurchases and requiring issuers to present the disclosure using a structured data language. The proposal was approved by a 3-2 vote. ([Fact sheet](#))
- Re-proposal of rules prohibiting fraud, manipulation, or deception in connection with security-based swaps, as well as new proposed rules prohibiting undue influence over the Chief Compliance Officers of security-based swap dealers and major security-based swap participants and requiring reporting of large security-based swap positions. The proposal was approved by a 3-2 vote. ([Fact sheet](#))
- The 2020 Final Budget and Accounting Support Fee for the Public Company Accounting Oversight Board. The budget was approved by a 5-0 vote. ([Fact Sheet](#))

FDIC Chair and Board Members Clash Over Release of a Request for Information on Bank Mergers

Key Points:

- Board Members Martin Gruenberg, Michael Hsu, and Rohit Chopra attempted to issue an RFI on the oversight of bank mergers.
- FDIC Chair Jelena McWilliams did not vote on the RFI and the agency asserted that the vote on the RFI was not valid.

On December 9, the three Democratic members of the Federal Deposit Insurance Corporation (FDIC) Board attempted to issue a [request for information](#) (RFI) on the rules and regulations governing bank merger transactions. The members voting in favor of the RFI were FDIC Board Member Martin Gruenberg, Acting Comptroller of the Currency Michael Hsu, and Consumer Financial Protection Bureau (CFPB) Director Rohit Chopra. The RFI was posted to the CFPB website.

Notably, the vote on the RFI occurred without FDIC Chairwoman Jelena McWilliams. The FDIC subsequently released a [statement](#) asserting that the RFI had not been approved by the FDIC and would not be released in the Federal Register:

Earlier today, the Consumer Financial Protection Bureau (CFPB) posted on its website a document, purportedly approved by the FDIC, requesting comment on bank mergers. No such document has been approved by the FDIC.

The FDIC has longstanding internal policies and procedures for circulating and conducting votes of its Board of Directors, and for issuing documents for publication in the Federal Register. In this case, there was no valid vote by the Board, and no such request for information and comment has been approved by the agency for publication in the Federal Register.

The FDIC has a proud 88-year history of Board members working together in a collegial manner. This history has spanned many Presidential administrations, and countless philosophical differences on substantive issues among Board members over the years. Notwithstanding the actions taken today, the FDIC expects this time-honored tradition of collegiality and comity to continue.

At a December 14 FDIC Board meeting, McWilliams rejected a request by Chopra to add to add a record of the vote on the RFI to the FDIC's official minutes. Following the meeting, Chopra issued a [statement](#) questioning the legality of the decision:

Directors Gruenberg, Hsu, and I cast our votes in the affirmative, but the Chair did not exercise her right to move the matter to a board meeting for discussion. Astoundingly, the General Counsel asserted, without any legal justification, that the vote of the supermajority of the Board was invalid. We have provided extensive legal support for why this vote was valid but have received no reply at all from the

General Counsel to defend his extreme view. We have essentially been instructed to accept an edict, but doing so would breach our fiduciary duties.

The actions of Chopra, Gruenberg, and Hsu have been heavily criticized by Republicans in Congress. House Financial Services Committee Ranking Member Patrick McHenry (R-NC) [announced](#) that the Republicans on the Committee would be launching an investigation into what he described as an “unprecedented, attempted power grab by Democrats on the Federal Deposit Insurance Corporation’s (FDIC) Board of Directors.” McHenry sent a [letter](#) to Chairwoman Maxine Waters (D-CA) urging Democrats to join the investigation and calling for an oversight hearing on the matter.

Senate Banking Committee Ranking Member Pat Toomey (R-PA) issued the following [statement](#):

This failed, publicity-seeking attempted coup is exactly the kind of lawless overreach that Senate Republicans warned about with Rohit Chopra. His reckless behavior today undermines the independence and integrity of the FDIC. It represents a radical politicization of a long-respected financial regulator. There’s no legitimacy to this supposed ‘vote’ or Mr. Chopra’s tweet.

That Marty Gruenberg would participate in this farce is disappointing but not surprising given his blemished record of implementing illegal Operation Choke Point and his mismanagement of the FDIC during his chairmanship.

In its history, the bipartisan FDIC board has generally worked in cooperative fashion no matter which party controlled the White House. This unprecedented, illegitimate attempt to depose a bona fide and Senate-confirmed chairman would severely weaken the ability of independent regulators to operate free from political interference.

The administration should disavow this odious destruction of democratic norms.

Ranking Member Toomey and the other Republican members of the Senate Banking Committee sent a [letter](#) to President Biden urging him to “rebuke Director Chopra and Director Gruenberg for their attempt to politicize the FDIC and compromise its neutrality and independence by disregarding its bylaws and its historical practice of conducting agency business through the chairman.” The letter added:

It is inappropriate for a director to continue serving on the FDIC board long after the expiration of his term in order to undermine its Senate-confirmed leader. We urge you to nominate promptly a candidate to replace Director Gruenberg, as well as a candidate to fill the vacant Vice-Chairman position on the FDIC board. These candidates should be well-qualified, mainstream individuals who will respect the institutional norms and practices that Director Chopra and Director Gruenberg have willfully chosen to ignore.

Senate Banking Committee Chairman Sherrod Brown (D-OH) and Senator Elizabeth Warren (D-MA) expressed support for the RFI, stressing the need to more closely scrutinize the bank merger process.

On December 15, FDIC Chair McWilliams [penned an op-ed](#) in the Wall Street Journal entitled “A Hostile Takeover of the FDIC” explaining the history of the developments of the RFI.

The Federal Deposit Insurance Corporation is led by a five-member board, which for decades has delegated day-to-day operations to its chairman, who by statute serves a five-year term. This structure was designed to ensure independence from changing political administrations and has led to a long legacy of collegiality. For 88 years the chairman has controlled the board agenda and worked collaboratively with other board members.

That all changed on Oct. 31, when board member Rohit Chopra presented me with a draft request for information on bank mergers. Two-and-a-half weeks earlier, Mr. Chopra had been sworn in as director of the Consumer Finance Protection Bureau, a position entitling him to a seat on the FDIC board.

The FDIC has long-established processes for working on policy documents, which are initially drafted by career staff with subject-matter expertise and decades of experience. That the CFPB director would serve the FDIC chairman with a finished document requesting public comment about the FDIC’s merger review process and insist on its publication was unprecedented.

The focus on strengthening merger reviews aligns with the Biden Administration’s focus on competition. President Biden highlighted bank merger policy in his July [executive order](#) on boosting competition.

OCC Issues Draft Guidance on Climate; Rescinds Community Reinvestment Act Changes

Key Points:

- *The OCC requested comment on draft guidance for the identification and mitigation of climate-related risks at large banks.*
- *The OCC rescinded its 2020 Community Reinvestment Act (CRA) rule. The agency is collaborating with the FDIC and the Federal Reserve to modernize the CRA.*

On December 16, the Office of the Comptroller of the Currency (OCC) issued a [request for feedback](#) on [draft principles](#) designed to support the identification and management of climate-related financial risks at OCC-regulated institutions with more than \$100 billion in total consolidated assets. The draft principles document notes:

Weaknesses in how banks identify, measure, monitor, and control the potential physical and transition risks associated with a changing climate could adversely affect a bank’s safety and soundness, as well as the overall financial system. Adverse effects could include potentially disproportionate impact on the financially vulnerable, including low- to moderate-income (LMI) and other disadvantaged households and communities. Many banks are considering these risks and would benefit from additional guidance as they develop capabilities, deploy resources, and make necessary investments to address climate-related financial risks.

These draft principles provide a high-level framework for the safe and sound management of exposures to climate-related financial risks, consistent with the existing risk management framework described in existing OCC rules and guidance. The principles are intended to support efforts by banks to focus on key aspects of climate risk management. The principles will help bank management make progress toward answering key questions on exposures and incorporating climate-related financial risks into banks' risk management frameworks.

The comment period on the draft guidance will remain open until February 14, 2022.

Additionally, on December 14, the OCC issued a [final rule](#) to rescind its June 2020 Community Reinvestment Act (CRA) rule. The OCC is working with the FDIC and Federal Reserve to draft updated interagency rules regarding the CRA. The final rule is effective January 1, 2022.

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

ENERGY & ENVIRONMENT

FERC Holds Last Meeting of the Year

Key Points:

- *The Federal Energy Regulatory Commission held its monthly open meeting on Thursday and approved a final rule on dam safety and proposed penalties for two natural gas pipeline operators.*
- *The Commission also welcomed Willie Phillips as its fifth member.*

On December 16, the Federal Energy Regulatory Commission (FERC) held its last open meeting of 2021. The Commission voted to approve:

- A [final rule](#) titled “Safety of Water Power Projects and Project Works”;
- A final rule to “more efficiently utilize...[the] transmission grid and help lower costs for consumers by improving both the accuracy and transparency of transmission line ratings” ([staff presentation](#));
- A notice of inquiry “to examine the rate recovery, reporting and accounting treatment of industry association dues and certain civic, political and related expenses, as well as whether additional transparency is needed with respect to defining donations for charitable, social or community welfare purposes” ([press release](#));
- An [order to show cause and notice of proposed penalty](#) directed at Energy Transfer Partners for violations of the Natural Gas Act and its certificate order authorizing the Rover Pipeline; and
- An [order requiring additional actions in compliance and addressing arguments raised on rehearing](#), and an order to show cause directed at Midship Pipeline Company.

In opening the meeting, Chairman Richard Glick reviewed the Commission's activities during 2021, noting that it issued 930 orders and held 23 technical conferences. He also observed that FERC issued

a number of reports, including a [joint staff inquiry](#) with the North American Electric Reliability Corporation (NERC) on “February 2021 Cold Weather Grid Operations”. Glick discussed the establishment of the [Office of Public Participation](#) and the [appointment](#) of the first Senior Counsel for Environmental Justice and Equity. Glick also welcomed Commissioner Willie Phillips, who was sworn in on December 3.

In discussing the final rule on the safety of hydropower facilities, Glick announced that FERC would hold an April workshop “to discuss financial assurance measures for hydro power projects”. He emphasized he need to “ensure licensees have sufficient resources for repairs [that] may be necessary to protect public safety.”

PHMSA Issues Final Rule on Pipelines in Environmentally Sensitive Areas

Key Point:

- *The Pipeline and Hazardous Materials Safety Administration finalized new rules that expand pipeline integrity management requirements to 3000 miles of pipelines located in “unusually sensitive areas”.*

On Thursday, the Pipeline and Hazardous Materials Safety Administration (PHMSA) released the text of the [interim final rule](#) titled “Pipeline Safety: Unusually Sensitive Areas for the Great Lakes, Coastal Beaches, and Certain Coastal Waters”. The new rule amends “pipeline safety regulations to explicitly state that certain coastal waters, the Great Lakes, and coastal beaches are classified as unusually sensitive areas for the purpose of compliance with the hazardous liquid integrity management regulations.” The rule extends pipeline safety regulatory requirements to nearly 3000 miles of pipelines. Public comments on the interim final rule are due 60 days following its publication in the Federal Register.

A PHMSA [press release](#) notes that the new regulations designate “the Great Lakes and coastal resources as [High Consequence Areas \(HCAs\)](#) – which obligates pipeline operators to update their Integrity Management Programs to include any pipeline that could affect these sensitive environments.” PHMSA also states that “[t]he rule ensures that hazardous liquid pipelines located near the Great Lakes or coastal environments are covered by enhanced standards for safety protocols, risk management, inspections, and repairs.”

Congress directed PHMSA to promulgate the regulations in the “PIPES Act of 2016” ([P.L. 114-183](#)) and the “PIPES Act of 2020” ([P.L. 116-260](#)).

Upcoming Hearings and Events

January 4, 2022

Renewable Fuel Standard: The Environmental Protection Agency (EPA) will hold a [virtual public hearing](#) “on its proposal for the ‘Renewable Fuel Standard (RFS) Program: RFS Annual Rules’”.

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

April 28, 2022

Winter-Readiness of Generating Units: The Federal Energy Regulatory Commission (FERC) will hold a [Joint Technical Conference](#) with the North American Electric Reliability Corporation (NERC) concerning winter-readiness of generating units. The agenda includes discussion of “how to improve the winter-readiness of generating units, including best practices, lessons learned, and increased use of the NERC guidelines...”

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](#).

HEALTH**HHS Releases Phase 4 Provider Relief Funds***Key Point:*

- *The Department of Health and Human Services announced it had released \$9 billion in funds from the Provider Relief Fund to health care providers across the country to mitigate the impact of COVID-19.*

On December 14, the Department of Health and Human Services announced it has distributed \$9 billion in Provider Relief Fund Phase 4 payments to health care providers to mitigate the losses they experienced due to COVID-19. Funds were distributed to over 69,000 providers across the country. The average payment is \$58,000 for small providers, \$289,000 for medium providers, and \$1.7 million for large providers. HHS Secretary Xavier Becerra stressed “this vital funding will ensure critical health care services are delivered to communities across the country.”

Distributions are based on expenses and decreased revenues from July 1, 2020 to March 31, 2021. Small providers had a higher percentage of losses and expenses reimbursed given they have historically operated on slimmer financial margins than large providers. HHS also used 25 percent of Phase 4 funds to deliver “bonus payments” based on the amount and type of services provided to Medicare, Medicaid, and CHIP patients. Those payments were calculated based on Medicare reimbursement rates.

HHS has also updated the conditions for the fund distribution to ensure they are used to address the financial impact of COVID-19. Recipients receiving a payment over \$10,000 must notify HHS of a merger with or acquisition of any other health care provider. Those who report a merger or acquisition may be more likely to be audited to ensure compliance.

HHS is reviewing the remaining applications it received for Phase 4 and will make the remaining payments in 2022.

See a breakdown of payments by state [here](#) and access the public dataset of all payments [here](#).

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

TRADE

Efforts Continue to Advance a Proposal to Establish a Review of U.S. Investments in Adversary Countries

Key Point:

- *Senators Bob Casey (D-PA) and John Cornyn (R-TX) are pushing to have their legislation to establish a review system for critical technology transfers between the U.S. and advisories added to the U.S. Innovation and Competition Act.*

After Senators Bob Casey (D-PA) and John Cornyn (R-TX) failed to attach their National Critical Capabilities Defense Act of 2021 ([S. 1854](#)) to the National Defense Authorization Act for Fiscal Year 2022, they now are trying to get their bill added to the U.S. Innovation and Competition Act (USICA). The bill would establish a review process to evaluate critical technology transfers for inbound government defined national critical capability projects. It would operate like an outbound CFIUS-style review in many ways. It is predicted this could include goods in health care, semiconductors, defense, and artificial intelligence among others.

USICA will be conferenced between the House and the Senate in Q1 of 2022, with more House action needed first. In the meantime, Senator Cornyn has stated he is speaking with business community stakeholders about the bill and how its provisions are intended to target advisories like China and Russia. U.S. companies have raised concerns that the nuance of their operations in China could be lost in the review process.

Canada Announces Plan to Implement Digital Services Tax If New Tax System is Not Imposed by 2024, Toughens Trade Posture with U.S.

Key Point:

- *Canada has announced a plan to impose a tax, and collect back taxes, if a new global tax system is not implemented by January 1, 2024.*
- *The U.S. urged Canada to forego a DST, and suggested possible retaliation.*

In October, the U.S. and other members of the Organization for Economic Cooperation and Development's Inclusive Framework, including Canada, announced an agreement to the principles of an Inclusive Framework on Base Erosion and Profit Shifting, including a moratorium on digital services taxes. Since the announcement, members have been negotiating the details. Canada stated this week they would maintain their plan to impose a digital services tax, and collect back taxes, if a new multilateral tax regime has not been implemented by January 1, 2024. Canada's announcement comes as they have shown

aggression on other U.S. trade issues such as the Buy American, and electric vehicle tax credits included in the Build Back Better bill. Prime Minister Justin Trudeau has told top Canadian ministers to take tough positions on trade disputes with the U.S.

In response, the Office of the U.S. Trade Representative (USTR) [announced](#) the U.S. is prepared to consider all options, including options available under trade agreements (USMCA, for example) and U.S. domestic laws, should Canada adopt a digital services tax. The USTR found in January that digital services taxes from Austria, India, India, Italy, Spain, Turkey, and the U.K. were discriminatory against U.S. businesses. Since then, USTR has struck similar, if not identical, deals with each country to remove digital services taxes once Pillar One of their agreements are implemented.

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.