February 8, 2019

Washington Update

This Week In Congress


Senate – The Senate passed S. 1, “The Strengthening America's Security in the Middle East Act of 2019.” The Senate also passed a motion to invoke cloture on S. 47, “The Natural Resources Management Act.”

Next Week In Congress

House – The House schedule for next week can be found HERE.

Senate – The Senate will continue its consideration of S. 47, “The Natural Resources Management Act.” The Senate is also expected to consider the nomination of William Barr to be Attorney General.

TAX

House Ways and Means Committee Discusses Retirement Reforms

Key Points:
- Chairman Richard Neal (D-MA) called on Congress to make saving easier for the American public and to do more to encourage employers to offer additional retirement plans.
- Chairman Neal asked members to support the Rehabilitation for Multiemployer Pensions Act, as well as legislation to require all but the smallest employers to maintain a 401(k) plan for their employees.
- Ranking Member Kevin Brady (R-TX) said the TCJA lowered taxes and increased paychecks for American workers, which in turn will help promote retirement security.

On Wednesday, the House Ways and Means Committee held a hearing on retirement reforms. Speakers included Diane Oakley, Executive Director for the National Institute on Retirement Security; Nancy Altman, President of Social Security Works; Cindy McDaniel, Co-director for the Missouri-Kansas City Committee to Protect Pensions; Roger Crandall, Chairman, President and CEO of...
MassMutual; Luke Huffstutter, owner of Annastasia Salon and Summit Salon Academy; Robin Diamonte, Corporate Vice President for pension investments at United Technologies Corporation; and Andrew Biggs, Resident Scholar at the American Enterprise Institute.

Chairman Richard Neal (D-MA) stressed that Democrats are committed to protecting Social Security, but noted that it was not meant to be the public’s sole source of retirement income. He called on Congress to make saving easier and to do more to encourage employers to offer additional retirement plans. He also urged members to support his bill, the Rehabilitation for Multiemployer Pensions Act (H.R. 397), also known as the Butch Lewis Act. The bill would establish the Pension Rehabilitation Administration within the Department of the Treasury as well as a related trust fund to make loans to certain multiemployer defined benefit pension plans. Neal stated he has also introduced a bill that “would require all but the smallest employers to maintain a 401(k) plan for their employees.” He added that the legislation “would provide an opportunity to save at work for millions of Americans.”

Ranking Member Kevin Brady (R-TX) touted the Tax Cuts and Jobs Act (TCJA) and said the legislation created lower taxes and higher paychecks for American workers, which he argued will help promote retirement security. In addition, the Ranking Member stressed the need to make it easier for employers to offer savings plans, suggesting that small businesses should be allowed to band together to offer plans. He also recommended eliminating the age limits for contributions to IRAs. In his closing remarks, Ranking Member Brady stressed the need to address the windfall elimination provision (WEP), stating that he would work with Chairman Neal on this issue.

House Ways and Means Oversight Subcommittee Holds Hearing on Presidential Tax Returns

Key Points:

- Members discussed the For the Peoples Act of 2019, which would require presidents and vice-presidents to disclose their tax return; and Internal Revenue Service audits of tax returns filed by presidents and vice-presidents.
- Subcommittee Chairman John Lewis (D-GA) said lawmakers have an obligation to “improve the integrity, access, and accountability of our country’s voting and electoral processes.”
- Subcommittee Ranking Member Mike Kelly (R-PA) said every citizen, including the president, has the right to privacy and using the House and Ways Committee as a vehicle to obtain the president’s tax returns would be an abuse of power.
- Should Democrats request the president’s tax returns and the executive branch refuses, the matter would likely head to the courts.

On Thursday, the House Ways and Means Committee’s Oversight Subcommittee held a hearing on “Legislative Proposals and Tax Law Related to Presidential and Vice-Presidential Tax Returns.” Democrats on the subcommittee highlighted H.R. 1, the For the Peoples Act of 2019, which would require presidents and vice-presidents to disclose their tax return; and Internal Revenue Service (IRS) audits of tax returns filed by presidents and vice-presidents. Speakers at the hearing included Dr. Joseph Thorndike, Director of the Tax History Project at Tax Analysts; Professor George Yin, Distinguished Professor of Law and Taxation at the University of Virginia of Law; Noah Bookbinder, Executive Director for the Citizens for Responsibility and Ethics in Washington; Steven Rosenthal, Senior Fellow at the Urban-Brookings Tax Policy Center; and
Ken Kies, Managing Director for the Federal Policy Group.

Subcommittee Chairman John Lewis (D-GA) argued that Congress “has a mission, an obligation, and a mandate to improve the integrity, access, and accountability of our country’s voting and electoral processes.” Subcommittee Ranking Member Mike Kelly (R-PA) stated that while oversight is important for the safety of every American; all citizens have the right to privacy – including the privacy of personal information contained in one’s tax returns. He asserted that should the Democrats use the House Ways and Means Committee as a vehicle to obtain the President’s tax returns, it would reflect as an abuse of power and set a dangerous precedent. Ranking Member Kelly also explained that the IRS conducts mandatory audits of the president and vice-president on an annual basis in addition to other financial disclosure requirements. Chairman Lewis rebutted this claim by stating; “Is it fair, based on internal policies alone, to expect the Internal Revenue Service to enforce the federal tax law against the president, the head of the executive branch, who has ultimate control of the agency? In the case of Nixon, the answer was ‘no.’”

Should Democrats proceed with requesting the president’s tax returns, Professor Yin argued that the White House may not have much of a case to the fight the request. He added that if the executive branch were to refuse the request, “we would be in uncharted territory.”

Update on Tax Extenders

Key Points:

- Senate Finance Committee Chairman Chuck Grassley and Ranking Member Ron Wyden (D-OR) have expressed interest in using a government spending bill as a vehicle for acting on the expired tax extender measures.

As of now, it does not appear that Congress will act on the expired tax extender measures which expired at the end of 2017. Senate Finance Committee Chairman Chuck Grassley (R-IA) has indicated that he would like to include an extension of the expired tax breaks in the spending bill that must get to the president’s desk a week from now. Senate Finance Ranking Member Ron Wyden (D-OR) has joined Chairman Grassley in reaching out to House members to see if there is any interest in taking action on the tax extenders within the next week. However, House Democrats have not expressed the same amount of interest as their Senate counterparts. Thus, it is unlikely that these tax provisions are going to be considered in any near-term package.

Upcoming Hearings and Events

February 13

The Middle Class in Today’s Economy: The House Ways and Means Committee’s Select Revenue Measures Subcommittee will hold a hearing entitled: “How Middle Class Families are Faring in Today’s Economy.” The hearing will take place on Wednesday, February 13, 2019 at 10:30am in 1100 Longworth House Office Building.

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Henry Homans contributed to this section.
FINANCIAL SERVICES

CFPB Issues Proposed Rule to Rescind Provisions of 2017 Payday Lender Regulation

Key Point:
- The proposed rule would rescind the requirements that lenders make certain underwriting determinations before issuing payday, single-payment vehicle title, and longer-term balloon payment loans.

On February 6, the Consumer Financial Protection Bureau (CFPB) issued a proposed rule to rescind certain provisions of its 2017 final rule on payday, vehicle title, and certain high-cost installment loans. As noted in a CFPB press release, the proposal would “rescind the rule’s requirements that lenders make certain underwriting determinations before issuing payday, single-payment vehicle title, and longer-term balloon payment loans.” The press release states that “there was insufficient evidence and legal support for the mandatory underwriting provisions in the 2017 final rule.” The proposed rule will be subject to a 90 day comment period.

Additionally, the CFPB issued a separate proposed rule to delay the August 19, 2019 compliance date for the mandatory underwriting provisions of the 2017 final rule to November 19, 2020. This proposed rule will be subject to a 30 day comment period.

House Financial Services Committee Chairwoman Maxine Waters (D-CA) issued a press release criticizing the proposed rules. In it, she stated:

I am deeply troubled by the Consumer Bureau’s proposal to gut a much-needed rule that would have reined in payday lenders and ensure consumers can afford to pay off their loans. It is no secret that payday loans often lead to irreparable financial consequences for hardworking families, as they usually have interest rates of 300 percent or more, and borrowers frequently take out new loans to pay off old ones because the loans were never affordable in the first place.

Under the leadership of former Director Richard Cordray, the Consumer Bureau took an important step to protect consumers from predatory debt traps but his successors seem to be working hard to assist payday loan sharks and repeal important consumer protections.

This proposal essentially sends a message to predatory payday lenders that they may continue to harm vulnerable communities without penalty. I urge Director Kraninger to rescind this proposal and work on implementing a comprehensive federal framework -- including strong consumer safeguards, supervision, and robust enforcement -- to protect consumers from the cycle of debt.

Upcoming Hearings and Events

February 12
Sanctions: The House Financial Services Committee will hold a hearing entitled “The Use of Sanctions and Economic Statecraft in Addressing U.S. National Security and Foreign Policy Challenges.”

February 13
Homelessness: The House Financial Services Committee will hold a hearing entitled
“Homeless in America: Examining the Crisis and Solutions to End Homelessness.”

**Banking for Cannabis Businesses:** The House Financial Services Committee’s Subcommittee on Consumer Protection and Financial Institutions will hold a hearing entitled “Challenges and Solutions: Access to Banking Services for Cannabis-Related Businesses.”

**February 14**

**Rural Housing:** The House Financial Services Committee’s Subcommittee on Housing, Community Development, and Insurance will hold a hearing entitled “The Affordable Housing Crisis in Rural America: Assessing the Federal Response.”

**Nominations:** The Senate Banking Committee will hold a hearing to consider the nominations of Mr. Bimal Patel, to be an Assistant Secretary of the Treasury; Mr. Todd M. Harper, to be a Member of the National Credit Union Administration Board; The Honorable Rodney Hood, to be a Member of the National Credit Union Administration Board; and Dr. Mark Anthony Calabria, to be Director of the Federal Housing Finance Agency.

**February 26**

**Credit Bureaus:** The House Financial Services Committee will hold a hearing entitled “Who’s Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System.”

**Monetary Policy:** The Senate Banking Committee will hold a hearing to receive the Federal Reserve’s Semiannual Monetary Policy Report to Congress. Federal Reserve Board Chairman Jerome Powell will testify at the hearing.

**February 27**

**Monetary Policy:** The House Financial Services Committee will hold a hearing entitled “Monetary Policy and the State of the Economy.” Federal Reserve Board Chairman Jerome Powell will testify at the hearing.

**Diversity:** The House Financial Services Committee’s Subcommittee on Diversity and Inclusion will hold a hearing entitled “Diversity Trends in the Financial Services Industry.”

For more information about financial services issues you may email or call Joel Oswald at 202-659-8201. Alex Barcham contributed to the articles.

**ENERGY & ENVIRONMENT**

Ocasio-Cortez and Markey Introduce Green New Deal Resolution

**Key Point:**

- Representative Alexandria Ocasio-Cortez (D-NY) and Senator Ed Markey (D-MA) introduced a non-binding proposal describing policy provisions and goals that should be included in a Green New Deal.

On February 7, 2019, Representative Alexandria Ocasio-Cortez (D-NY) and Senator Ed Markey (D-MA), introduced a resolution “Recognizing the duty of the Federal Government to create a Green New Deal” (H.Res. 109, S.Res. 59). The resolution is not a substantive bill that would be enacted into law. Rather it is a non-binding proposal that describes what policy provisions and goals should be included in a subsequent “Green New Deal” legislative package. The resolution introduced on February 7, follows an earlier proposal issued by Ocasio-Cortez following last November’s elections.

The resolution cites the dangers and economic costs of climate change, and describes the other
social challenges that Congress should address as part of Green New Deal legislation. The resolution calls for “a new national, social, industrial and economic mobilization” to respond to these issues. It also declares that “it is the duty of the Federal Government to create a Green New Deal” to:

- “achieve net-zero greenhouse gas emissions through a fair and just transition for all communities and workers;”
- “create millions of good, high-wage jobs and ensure prosperity and economic security for all people of the United States;” and
- “invest in the infrastructure and industry of the United States to sustainably meet the challenges of the 21st century”.

It further calls for the Green New Deal to ensure the provision of: “clean air and water;…climate and community resiliency;…healthy food;…access to nature; and…a sustainable environment…”

To reduce greenhouse gas emissions, the resolution calls for the Green New Deal’s “10-year national mobilization” to include:

- “meeting 100 percent of the power demand in the United States through clean, renewable, and zero-emission energy sources;
- “building or upgrading to energy-efficient, distributed, and ‘smart’ power grids, and ensuring affordable access to electricity…”;
- “upgrading all existing buildings in the United States and building new buildings to achieve maximum energy efficiency, water efficiency, safety, affordability, comfort, and durability, including through electrification;”
- removing “pollution and greenhouse gas emissions from the agriculture sector as much as technologically feasible…”; and
- “overhauling transportation systems in the United States to remove pollution and greenhouse gas emissions from the transportation system as much as technologically feasible…”

Original Post-Election Proposal:

Following the November, 2018 elections, Representative-Elect Ocasio-Cortez issued a proposal for a “Select Committee for a Green New Deal”. The panel would have been authorized “to develop a detailed national, industrial, economic mobilization plan…for the transition of the United States economy to become greenhouse gas emissions neutral and to significantly draw down greenhouse gases from the atmosphere and oceans and to promote economic and environmental justice and equality.” The proposal would have directed the Committee to develop a “Plan for a Green New Deal” by January 1, 2020, and draft legislation based on the plan by March 1, 2020.

Congressional Reaction:

While the House and Senate resolutions initially attracted 67 and 11 cosponsors respectively, the congressional leadership of the party has been noncommittal. When asked about the Green New Deal resolution on February 7, House Speaker Nancy Pelosi (D-CA) responded that “I haven’t seen it”, adding that “I do know that it’s enthusiastic, and we welcome all the enthusiasms that are out there.”

Upcoming Hearings and Events

February 12

**Missed Energy Efficiency Standard Deadlines:** The House Energy and Commerce Committee’s Energy Subcommittee will hold a
hearing titled “Wasted Energy: Energy Department’s Inaction on Efficiency Standards and its Impact on Consumers and the Climate”.

**Climate Change:** The House Natural Resources Committee’s Subcommittee on Energy and Mineral Resources will hold a hearing on “Climate Change: Preparing for the Energy Transition”.

**Climate Change:** The House Natural Resources Committee’s Subcommittee on Indigenous Peoples of the United States will hold a hearing on “The Impacts of Climate Change on Tribal Communities”.

**Climate Science:** The House Science, Space, and Technology Committee will hold a hearing on “The State of Climate Science and Why it Matters”.

**February 13**

**Invasive Species Threat:** The Senate Environment and Public Works Committee will hold a hearing on “The Invasive Species Threat: Protecting Wildlife, Public Health, and Infrastructure”.

**Climate Change:** The House Natural Resources Committee’s Subcommittee on National Parks, Forests, and Public Lands will hold a hearing on climate change.

**February 14**

**Energy Industry Cybersecurity Outlook:** The Senate Energy and Natural Resources Committee will hold a hearing on “the status and outlook for cybersecurity efforts in the energy industry.”

**February 21**

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

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**March 28**

**Energy Sector Cybersecurity:** The Federal Energy Regulatory Commission (FERC) and the Department of Energy will hold a technical conference on “Security Investments for Energy Infrastructure”. The conference will “discuss current cyber and physical security practices used to protect energy infrastructure and will explore how federal and state authorities can provide incentives and cost recovery for security investments in energy infrastructure, particularly the electric and natural gas sectors.”

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

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**HEALTH**

**House Committees Continue to Examine Protections of Pre-Existing Conditions**

**Key Point:**

- This week, the House Energy and Commerce Committee, Education and Labor Committee, and Appropriations Committee held hearings addressing protections for people with pre-existing conditions.

On February 6, the House Energy and Commerce Committee’s Health Subcommittee held a hearing entitled: “Texas v. U.S.: The Republican Lawsuit and Its Impacts on Americans with Pre-Existing Conditions.” Topics discussed during the hearing included: (1) Texas v. U.S.; (2) Individual Mandate; (3) Medicare for All; (4) Mental Health and Substance Abuse; (5) Medicaid Expansion; (6) Affordable Care Act (ACA) Provisions; (7) Short-Term, Limited-Duration Plans; (8) Little Lobbyists; (9) Tribal Health Care; and (10) Silver Loading.
Chairman Anna Eshoo (D-CA) expressed concern the Department of Justice under the Trump Administration has refused to support the ACA. She predicted health insurance costs will skyrocket when healthy people leave the marketplace for “junk insurance plans” that will not cover them when they get sick if the ruling declaring the ACA invalid is upheld. Ranking Member Michael Burgess (R-TX) suggested Democrats could reestablish the individual mandate and contended there is broad bipartisan support for protecting pre-existing conditions.

On February 6, the House Committee on Education and Labor held a hearing entitled “Examining Threats to Workers with Pre-existing Conditions.” Topics discussed in the hearing included, but were not limited to: (1) United States v. Texas; (2) Short-Term/Association Health Plans; (3) ACA Costs; (4) Employer Health Insurance; (5) Lifetime and Annual Caps; (6) ACA Outreach/Enrollment; (7) Federal vs. Local Insurance; (8) Genetic Predispositions; (9) State Flexibility; (10) Preventative Care; (11) Opioid Crisis/Substance Use Disorder; (12) Medicare Advantage; (13) Consumer Protections; (14) Maternal Care; (15) Job Lock; (16) Minority Health Care/Personal Experiences.

Chairman Bobby Scott (D-VA) expressed concern with the Administration’s finalized rule on association health plans asserting these plans would raise premiums based on gender, occupation, and age and result in increased costs for workers, particularly older and sicker workers. Ranking Member Virginia Foxx (R-NC) stressed the importance of giving workers flexibility and freedom for their health insurance choices. She noted the American Health Care Act included 137 explicit protections for pre-existing conditions.

On February 6, the House Committee on Appropriations’ Subcommittee on Labor, Health and Human Services, Education, and Related Agencies held a hearing entitled “Impact of the Administration’s Policies Affecting the Affordable Care Act.” Topics discussed in the hearing included, but were not limited to: (1) short-term and association health plans; (2) silver-loading; (3) Medicaid; (4) enrollment and outreach; (5) next steps and suggestions; (6) preexisting conditions and ACA protections; (7) women’s health; and (8) state programs.

Chairman Rosa DeLauro (D-CT) stressed before the ACA, the cost of health care was rising at an unsustainable rate and health care costs were taking up a larger share of the family budget, but now national spending on health care is now below pre-ACA expectations. Ranking Member Tom Cole (R-OK) questioned how to make health care affordable for all Americans.

Upcoming Hearings and Meetings

February 12

**Financing Cures:** The Massachusetts Institute of Technology FoCUS Project will host a conference entitled “Paying for Cures: Ensuring Patient Access and System Sustainability.”

**Opioids:** The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “Managing Pain During the Opioid Crisis.”

**FDA:** The House Appropriations Committee will hold a hearing on “Food and Drug Administration - Status of Operations.”

**Drug Prices:** The House Ways and Means Committee will hold a hearing on “The Cost of Rising Prescription Drug Prices.”
Drug Policy: The House Oversight and Reform Committee will hold a hearing on the White House’s National Drug Control Strategy.

February 13

Pre-Existing Conditions: The House Energy and Commerce Committee will hold a hearing on “Strengthening Our Health Care System: Legislation to Reverse ACA Sabotage and Ensure Pre-Existing Conditions Protections.”

Opioids: The National Academy of Medicine will hold a “Action Collaborative on Countering the U.S. Opioid Epidemic Webinar.”

Emerging Threats: The Senate Appropriations Committee will hold a hearing on Ebola outbreak in the Democratic Republic of the Congo and other emerging health threats.

February 26

Drug Prices: The Senate Finance Committee will hold its second hearing on prescription drug prices.

For more information about healthcare issues you may email or call Nicole Ruzinski Bertsch or George Olsen at 202-659-8201.

TRADE

Senator Portman Leads Push to Rein in President Trump’s Tariff Power

Key Points:
- The Trade Security Act of 2019 would allow Congress to pass a resolution of disapproval when the president alters any imports; and
- It would also give the Pentagon authority to investigate the national security implications of imports targeted for Section 232 tariffs.

On February 6, 2019 Senator Rob Portman (R-OH) led a bipartisan group to reintroduce the Trade Security Act of 2019. This legislation would restrict the president's tariff authorities under Section 232 of the Trade Expansion Act of 1962 by expanding the language in the statute that allows lawmakers to reject trade restrictions. Section 232 currently states Congress can pass a resolution of disapproval only when the president alters “imports of petroleum or petroleum products.” Portman's bill would lift that restriction and expand the language to cover all imports. Additionally, imports targeted for possible Section 232 tariffs would be investigated by the Pentagon for national security implications. If a threat is indicated then the president could ask the Commerce Department, in consultation with the Pentagon and the Office of the U.S. Trade Representative, for recommendations on how to respond. The Trade Security Act of 2019 would only apply to future Section 232 investigations. Co-sponsors of the bill include Senators Doug Jones (D-AL), Joni Ernst (R-IA), Lamar Alexander (R-TN), Dianne Feinstein (D-CA), Kyrsten Sinema (D-AZ), and Deb Fischer (R-NE).

Senators Patrick Toomey (R-PA) and Bob Corker (R-TN) introduced a similar bill in the previous Congress that would require the president to submit to Congress any proposed trade restrictions under Section 232 for approval within 60 days. Senate Finance Committee Chairman Chuck Grassley (R-IA) has not endorsed any particular bill, but House Ways & Means Trade Subcommittee member Representative Ron Kind (D-WI) has stated that the Portman bill has been garnering more support.
**Section 301 Possible Enforcement Tool for USMCA**

*Key Points:*
- U.S. Trade Representative Robert Lighthizer suggested that Section 301 of the Trade Act of 1974 could be used to enforce provisions in the U.S.-Mexico-Canada Agreement (USMCA).
- Section 232 tariffs on steel and aluminum also remain an unresolved issue for many on both sides of the aisle.

Many Democrats remain concerned about the enforceability of USMCA provisions related to labor and environmental requirements. Senate Finance Committee Ranking Member Ron Wyden (D-OR) is pessimistic that Mexico will honor the efforts to improve labor standards.

Section 301 of the Trade Act of 1974 says the U.S. Trade Representative can impose trade restrictions on another country if it finds “an act, policy, or practice of a foreign country violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or is unjustifiable and burdens or restricts United States commerce.” Also, Section 301 specifies that a host of labor practices could be considered “unreasonable,” including “a persistent pattern of conduct that -- (1) denies workers the right of association, (2) denies workers the right to organize and bargain collectively, (3) permits any form of forced or compulsory labor, (4) fails to provide a minimum age for the employment of children, or (5) fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers.”

Lighthizer has provided little clarity about how Section 232 tariffs on Mexican and Canadian steel might be handled. Last week House Ways & Means Ranking Member Kevin Brady (R-TX), said he “cannot imagine” the Senate considering USMCA as long as the Section 232 tariffs remain.

*For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Cullen Neely contributed to this section.*

*This Week in Congress was written by Alex Barcham.*