TAX

Treasury Secretary Steven Mnuchin Responds to Request for Trump’s Tax Returns

Key Points:
- Treasury Secretary Mnuchin tells House Ways and Means Chairman Neal (D-MA) that he is consulting with the Department of Justice on how to respond to the request for President Trump’s tax returns.
- On April 3, Chairman Neal wrote to IRS Commissioner Charles Rettig calling for the past six years of tax returns for the President along with the returns of eight businesses connected to the Trump.
- Chairman Neal argues that only the IRS should be involved in responding, and that the agency must provide the returns under the language of IRC section 6103(f).

On April 3, House Ways and Means Committee Chairman Neal (D-MA) wrote to Internal Revenue Service (IRS) Commissioner Charles Rettig requesting that the agency provide six years of President Trump’s tax returns along with the returns of eight businesses connected to President Trump. The letter set an April 10 deadline for compliance with the request. This week, on April 10, Treasury Secretary Steven Mnuchin responded saying that Treasury is unable to meet the deadline and is still reviewing the request.
According to the letter; “[t]he Committee’s request raises serious issues concerning the constitutional scope of Congressional investigative authority, the legitimacy of the asserted legislative purpose, and the constitutional rights of American citizens.”

Chairman Neal, however, argues that only the IRS should be involved in responding because it has been delegated the authority on tax return matters from Treasury, and that the agency must provide the returns under the language of Internal Revenue Code (IRC) section 6103(f). The Chairman issued a statement in response to the letter saying that he would consult with counsel and determine an appropriate response to Rettig in the coming days. In all likelihood, a second letter or possibly a subpoena seems likely to be the next formal communication on the issue.

**Senate Finance Committee Holds Hearing on Internal Revenue Service**

**Key Points:**

- Senate Finance Chairman Grassley (R-IA) said IT systems within the IRS must be modernized and IT theft remains a top concern.
- Chairman Grassley said bipartisan legislation introduced in the Senate would codify the independent appeal process to strengthen IRS independence and would also require the agency to create long-term plans for improving customer service.
- Ranking Member Wyden (D-OR) stressed the importance of allowing Americans to file their taxes online directly through the IRS.

On April 10, the Senate Finance Committee held a hearing entitled “The 2019 Tax Filing Season and the 21st Century IRS.” Topics discussed in the hearing included: (1) IRS Whistleblower Program; (2) IT Modernization; (3) President Trump’s Tax Returns; (4) Earned Income Tax Credit; (5) IRS Workforce; (6) Work-Classification; (7) Non-profit Organizations; (8) Wayfair Ruling; (9) FAFSA; (10) Medical Device Tax; and (11) Conservation Easement Tax Deduction.

Chairman Grassley (R-IA) in his opening statement said the relationship between the IRS and Congress has not always been positive but argued that there is now an opportunity to move forward and address the challenges facing the IRS today. He specifically noted that IT systems within the agency are outdated and IT theft has remained a top concern. He also noted the Taxpayer First Act that he and Ranking Member Wyden (D-OR) introduced last month, and explained that the bill would codify the independent appeal process to strengthen IRS independence and would also require the agency to create long-term plans for improving customer service. Ranking Member Wyden echoed the chairman’s comments on the proposed legislation and added that he supports the proposal to allow Americans to file their taxes online directly through the IRS.

IRS Commissioner Rettig explained that he looks forward to improving cyber security and further training employees within the IRS to help better serve taxpayers. He added that he is pleased to announce that the tax filing season has continued to go as planned and is a tribute to IRS employees. He said the President’s budget request asks for over $11 billion for the IRS in FY 2020 which is $170 million above the 2019 enacted level. He noted that the IRS is finalizing its IT modernization plan and said the bill includes an additional $290 million for this plan. He said the IRS has continued to work towards protecting taxpayer data and mentioned that the budget called for a well-trained workforce. He said to help in this area; the IRS is asking to restore the streamline critical pay authority, which expired in 2013.
House Passes IRS Reform Legislation

Key Points:

- The Taxpayer First Act passed the House on April 9 and would preserve the IRS Oversight Board, establish an independent Office of Appeals, and permanently authorize the volunteer assistance program for low-income filers.
- Some lawmakers contended late in the debate that the bill would make it impossible for the IRS to create its own tax return software for low-income Americans.
- Senate Finance Chairman Grassley said he has given up on the idea of adding tax extenders or TCJA technical corrections to the IRS reform bill.

On April 9, the House passed legislation to restructure the IRS, add protections for taxpayers, and upgrade agency technology. H.R. 1957, the Taxpayer First Act, received last minute opposition from members who argued that the bill would make it more challenging for the IRS to create its own free tax return software for low-income Americans. Representative John Lewis (D-GA) responded to the critics by saying that “[w]hatever the problem may be, we will fix it.”

Overall, the bill would preserve the IRS Oversight Board, establish an independent Office of Appeals, and permanently authorize the volunteer income tax assistance program for low-income filers. The legislation would also limit the ability of private debt collectors to pursue unpaid taxes for low-income taxpayers and codify an exclusion to upfront fees and initial payments in the offer in compromise program for Americans with incomes below 250 percent of the federal poverty line. In regard to technology, the bill requires the IRS to develop an internet portal for taxpayers to file Form 1099 and an automated system to receive income verification requests for mortgage applications.

While the legislation has bipartisan support in the Senate, lawmakers could threaten the process by trying to use it as a way to pass tax extenders or make technical corrections to the Tax Cuts and Jobs Act (TCJA). However, Senate Finance Chairman Grassley indicated that course was not likely by stating that he has given up on the idea of adding tax extenders to the legislation. “I don’t think this can be a vehicle for other things,” he said this week.

Senator Elizabeth Warren Proposes Corporate Profits Tax

This week, Senator Warren (D-MA) proposed an idea to tax companies earning more than $100 million per year – roughly 1200 companies in the U.S. match this criterion. According to Senator Warren, for every dollar of profit above $100 million, a company would pay a 7 percent surtax. The “Real Corporate Profits Tax” as she labels it, would generate more than $1 trillion and apply to 1,200 companies according to her office and an estimate prepared by two UC Berkeley academics. That tax would apparently apply against the income reported for financial purposes by public companies.

In her release on the issue, Senator Warren cited as one rationale for the proposed tax the fact that for book or financial purposes, companies may declare earnings that are not treated as income for tax purposes. Of course, tax accounting allows for carryforward of net operating losses and other tax attributes that can change the taxable income as compared to book income. It is not clear what basis would be the income measurement in her proposal.
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
Secretary Mnuchin Testifies in House Appropriations and House Financial Services Committees

Key Point:
- Committee members raised concerns related to sanctions, the Bank Secrecy Act, beneficial ownership, the Export-Import Bank, and international insurance standards.

On April 9, Treasury Secretary Steven Mnuchin testified before the House Financial Services Committee and the House Appropriations Committee’s Subcommittee on Financial Services and General Government (FSGG) Subcommittee.

House Financial Services Committee Chairwoman Maxine Waters (D-CA) said the Secretary must provide the Committee with answers on the delisting of companies associated with Russian oligarch Oleg Deripaska. She expressed concern that the delisting agreement sends the wrong message to Deripaska, other oligarchs, and President Vladimir Putin. She said President Trump has sided with Putin over his own Justice Department, and she expressed concern that the relationship between Putin and Trump may be affecting sanctions policy. She noted that Congress made significant changes to CFIUS to target national security threats while preserving investment in the U.S. He noted that last week CFIUS unwound two deals involving Chinese investors. He stressed the need to ensure that CFIUS reform legislation is faithfully implemented.

FSGG Subcommittee Chairman Mike Quigley (D-IL) said the Fiscal Year (FY) 2020 budget request for Treasury is $12.7 billion, which is $62 million below the FY2019 enacted level. He noted that the request includes cuts to the Internal Revenue Service (IRS), which would weaken customer service. He said he is pleased with the proposed increases in funding for the Office of Terrorism and Financial Intelligence (TFI) and the Financial Crimes Enforcement Network (FinCEN). Quigley opposed the plan to divert up to $601 million from the Treasury Forfeiture Fund (TFF) to pay for construction of physical barriers along the southern border of the United States. He said $242 million has already been diverted to the Department of Homeland Security (DHS), suggesting that this money would be better used for IRS enforcement. FSGG Subcommittee Ranking Member Tom Graves (R-GA) said GDP has grown and unemployment has dropped since the passage of the Tax Cuts and Jobs Act (TCJA). He commended Mnuchin and IRS staff for their work to implement the TCJA in time for tax season. He said the budget request makes important investment in the border and national security, while making tough choices about spending. He said the budget request includes important investment in sanctions enforcement and cybersecurity.
Representative Carolyn Maloney (D-NY) said Mnuchin had previously offered to work with the Committee on beneficial ownership legislation. She said there has been bipartisan work on a bill and they are close to an agreement. She said Treasury has provided technical assistance on the bill. She asked if they are moving in the right direction on the bill. Mnuchin responded in the affirmative. He said he hopes to see a bipartisan bill passed.

Representatives Steve Stivers (R-OH), Emanuel Cleaver (D-MO), Denny Heck (D-WA), and Brad Sherman (D-CA) emphasized the need to reauthorize the Export-Import Bank and achieve a quorum on the board. Mnuchin agreed that the Export-Import Bank should be reauthorized and should have a quorum. He stated that this is a priority for President Trump.

Representatives Sean Duffy (R-WI) and Ted Budd (R-NC) raised concerns with the ongoing International Association of Insurance Supervisors (IAIS) negotiations to develop international capital standards (ICS). They asked if Mnuchin would protect the U.S. system of insurance regulation and capital standards. Mnuchin responded in the affirmative.

Representatives Steve Stivers (R-OH) and Roger Williams (R-TX) stressed the need to review the Bank Secrecy Act and reduce the compliance burdens on banks associated with the suspicious activity report regime.

**House Financial Services Committee Holds Hearing on Holding Megabanks Accountable**

**Key Points:**

- Democrats raised concerns with the conduct of the banks in regards to executive compensation, overdraft fees, and mandatory arbitration.
- Republicans stressed the importance of large banks to U.S. economic competitiveness and recommended reforms to capital requirements and the Bank Secrecy Act.

On April 10, the House Financial Services Committee held a hearing entitled, “Holding Megabanks Accountable: A Review of Global Systemically Important Banks 10 years after the Financial Crisis.” The Committee received testimony from the CEOs of Citigroup, JPMorgan Chase, Morgan Stanley, Bank of America, State Street, Bank of New York Mellon, and Goldman Sachs. Chairwoman Maxine Waters (D-CA) questioned what the globally systemically important banks (GSIBs) learned from the financial crisis and whether they are still engaging in harmful practices. She said the banks assembled have paid $163 billion in fines since the financial crisis, including $76.1 billion from Bank of America. She suggested the banks view fines as the cost of doing business, noting that they continue to bring in massive profits. She suggested that some bank CEOs make more than $30 million annually. She stressed the need to hold banks accountable, stating that they should not be rewarded for law-breaking behavior. She said Trump Administration regulators are deregulating banks by weakening capital standards, stress testing, and the Volcker Rule. She expressed concern that several of the institutions are too big to manage.

Ranking Member Patrick McHenry (R-NC) said this was a “hearing in search of a headline.” He said the Committee previously held a hearing on the wrongdoing at Wells Fargo, which he supported. He suggested that the current hearing was simply based on the size of the banks. He suggested that the size of the banks is actually a result of Democratic legislation in the Dodd-Frank Act (DFA). He
said the regulatory burdens imposed by the DFA have encouraged bank consolidation. He suggested that the Committee’s time would be better spent examining whether regulators are prepared for a “hard Brexit.”

Representatives Lacy Clay (D-MO), Ayanna Pressley (D-MA), Alexandria Ocasio-Cortez (D-NY), Gregory Meeks (D-NY), Madeleine Dean (D-PA), Al Green (D-TX), Nydia Velazquez (D-NY), Katie Porter (D-CA), Carolyn Maloney (D-NY), Brad Sherman (D-CA), and Sylvia Garcia (D-TX) raised concerns with the conduct of the largest banks. Ocasio-Cortez pointed to the amount of fines levied against the largest banks since the financial crisis. Clay asserted that the big banks do not lend enough to small businesses. Maloney suggested that JP Morgan is engaging in abusive overdraft practices, noting that she is working on legislation in this area. Velazquez and Porter raised concerns related to executive compensation and income inequality. Sherman spoke in opposition to the use of mandatory arbitration in consumer products.

Representatives Ann Wagner (R-MO), Andy Barr (R-KY), Roger Williams (R-TX), Anthony Gonzalez (R-OH), French Hill (R-AR), and Lee Zeldin (R-NY) emphasized the importance of the GSIBs to U.S. international competitiveness. They suggested that if these banks did not exist, then large U.S. corporations would have to go to foreign banks for financing. James Dimon (Chairman and CEO, JP Morgan Chase) said JP Morgan finances many large U.S. companies. He stressed the need for the U.S. to have a strong banking system, suggesting that this business would go abroad without the large banks. Brian Moynihan (Chairman and CEO, Bank of America) said the U.S. financial system needs large institutions to finance large corporations like Google. He stated that if U.S. banks could not provide this financing, then foreign banks would. He suggested that the U.S. actually has the least concentrated banking sector of any developed economy.

Representatives Frank Lucas (R-OK), Steve Stivers (R-OH), Barry Loudermilk (R-GA), and Denver Riggleman (R-VA) spoke on the importance of financial industry cybersecurity. Lucas suggested that the cybersecurity regulatory regime is very complex and involves many agencies. He asked about the cost of implementing the large web of cybersecurity regulation. James Gorman (Chairman and CEO, Morgan Stanley) said Morgan Stanley will spend more than $400 million on cybersecurity this year, suggesting that cyber is the most existential threat to the financial system.

Representatives Blaine Luetkemey (R-MO), Bill Huizenga (R-MI), Andy Barr (R-KY), and Ted Budd (R-NC) raised concerns with the regulatory burdens imposed on banks. They suggested that the banking system is far better capitalized before the 2008 financial crisis and contended that capital requirements should be recalibrated. Representatives Ed Perlmutter (D-CO) and Alexandria Ocasio-Cortez (D-NY) expressed opposition to weakening capital requirements. Michael Corbat (CEO, Citigroup) said the Federal Reserve measures 23 or 24 different types of capital, suggesting that there should be a holistic approach to capital. Dimon suggested that capital requirements should be recalibrated and harmonized.

Representatives Blaine Luetkemeyer (R-MO), Steve Stivers (R-OH), and Anthony Gonzalez (R-OH) expressed support for reforming the Bank Secrecy Act/Suspicious Activity Report
regime. Stivers stressed the need to provide
more feedback to banks.

Federal Reserve Issues Proposed Rule on
Prudential Standards for Large Foreign
Banks

Key Point:
- The Federal Reserve issued proposed rules
intended to ensure that the regulatory
framework for foreign banks matches the risks
they pose to the U.S. financial system.

On April 8, the Federal Reserve issued a
proposed rule entitled, “Prudential Standards
for Large Foreign Banking Organizations;
Revisions to Proposed Prudential Standards for
Large Domestic Bank Holding Companies and
Savings and Loan Holding Companies.” As
noted in a press release, under the proposed
framework “foreign banks with $100 billion or
more in U.S. assets would be sorted into
categories of increasingly stringent
requirements based on several factors,”
including asset size, cross-jurisdictional activity,
reliance on short-term wholesale funding,
nonbank assets, and off-balance sheet
exposure. The Federal Reserve also issued a
joint proposed rule with the Office of the
Comptroller of the Currency (OCC) and the
Federal Deposit Insurance Corporation (FDIC)
on “Proposed changes to applicability
thresholds for regulatory capital requirements
for certain U.S. subsidiaries of foreign banking
organizations and application of liquidity
requirements to foreign banking organizations,
certain U.S. depository institution holding
companies, and certain depository institution
subsidiaries.”

Upcoming Hearings and Meetings

April 15
Global Markets Advisory Committee: The
CFTC will hold a meeting of its Global
Markets Advisory Committee (GMAC). The
GMAC is scheduled to examine four pillars of
the 2009 G20 directive regarding the over-the-
counter (OTC) derivatives market: (1) trading
on exchanges or electronic trading platforms;
(2) clearing through central counterparties; (3)
margin requirements for non-centrally cleared
derivatives; and (4) data reporting to trade
repositories.

Fixed Income Market Structure Advisory
Committee: The SEC will hold a meeting of
its Fixed Income Market Structure Advisory
Committee (FIMSAC). The agenda for the
meeting includes draft recommendations on:
(1) Pennying in the Corporate Bond and
Municipal Securities Markets; and (2) Certain
Principal Transactions with Advisory Clients.
The Advisory Committee will receive a
presentation from the Financial Industry
Regulatory Authority (FINRA) on the Block
Pilot and Reference Data Service Proposal. The
meeting will also include a panel on “LIBOR
Transition: Implications for the Corporate
Bond and Municipal Securities Markets.”

April 16
FDIC Open Meeting: The Federal Deposit
Insurance Corporation (FDIC) will hold an
open meeting to consider three items: (1)
Notice of Proposed Rulemaking - Proposed
changes to Applicability Thresholds for
Regulatory Capital Requirements for Certain
U.S. Subsidiaries of Foreign Banking
Organizations and Application of Liquidity
Requirements to Foreign Banking
Organizations, Certain U.S. Depository
Institution Holding Companies, and Certain
Depository Institution Subsidiaries; (2) Notice
of Proposed Rulemaking - Proposed
Amendments to 12 C.F.R. Part 381; and (3)
Advanced Notice of Proposed Rulemaking
Relating to 12 C.F.R. § 360.10 and Extension
of Insured Depository Institution Resolution
Plan Submission Deadlines.
April 17
**Energy and Environmental Markets Advisory Committee:** The CFTC will hold a meeting of its Energy and Environmental Markets Advisory Committee (EEMAC). The meeting will focus on three topics: (1) derivatives markets’ responses to physical markets’ developments; (2) exchange-traded energy derivatives markets; and (3) the availability of clearing and other services in the energy derivatives markets.

April 18
**Federal Advisory Committee on Insurance:** The Federal Advisory Committee on Insurance (FACI) will meet to “address the use of subcommittees to fulfill the Committee’s mandate, identify the Committee’s priorities for 2019, and receive an update from the Federal Insurance Office.”

April 24
**Fintech and Banking:** The Federal Deposit Insurance Corporation (FDIC) and Duke University’s Fuqua School of Business will hold a financial technology research conference in Arlington, Virginia. The agenda includes remarks and discussion by Secretary of the Treasury Steven Mnuchin, FDIC Chairman Jelena McWilliams, and other industry, academic and government officials.

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

**ENERGY & ENVIRONMENT**

**President Issues Energy Infrastructure Executive Orders**

*Key Point:*
- This week, President Trump signed two anticipated executive orders to address: federal impediments to energy infrastructure development; and the Presidential Permit process for border-crossing pipelines.

On April 10, President Trump issued two executive orders: “Executive Order on Promoting Energy Infrastructure and Growth” and “Order on the Issuance of Permits with Respect to Facilities and Land Transportation Crossings at the International Boundaries of the United States.”

The “Executive Order on Promoting Energy Infrastructure and Growth” directs a series of actions by federal agencies that are intended to further the declared “policy of the United States to promote private investment in the Nation’s energy infrastructure”. The Order requires:
- The Environmental Protection Agency (EPA) to update guidance and regulations on implementation of Section 401 of the Clean Water Act;
- The Department of Transportation to issue new regulations governing safety of liquefied natural gas (LNG) facilities.
- The Department of Transportation to “propose for notice and comment a rule…that would treat LNG the same as other cryogenic liquids and permit LNG to be transported by rail car.”
- The Department of Labor to review “retirement plans subject to the Employee Retirement and Income Security Act of 1974 (ERISA) in order to identify whether there are discernable trends with respect to such plans’ investments in the energy sector…[and] review…existing…guidance on the fiduciary responsibilities for proxy voting to determine whether any such guidance should be rescinded, replaced, or modified…”;
- The Departments of Interior, Agriculture, and Commerce to:
“develop a master agreement for energy infrastructure rights-of-way renewals; and...within 1 year...initiate a renewal or reauthorization process for all expired energy rights-of-way, leases, permits, and agreements, as determined to be appropriate...”;

- The Department of Transportation to provide a report on the “economic and other effects caused by the inability to transport sufficient quantities of natural gas and other domestic energy resources to the States in New England...”;
- The Department of Energy to produce a report on “the economic and other effects caused by limitations on the export of coal, oil, natural gas, and other domestic energy resources through the west coast of the United States”;
- Federal agencies to “review existing authorities related to the transportation and development of domestically produced energy resources...[and] how those authorities can be most efficiently and effectively used to” promote U.S. energy development; and
- The Department of Energy to issue a report on opportunities “to promote economic growth of the Appalachian region, including the growth of petrochemical and other industries.”

In reviewing Section 401 guidance, the Order directs the EPA to consider a number of issues, including: “the need to promote timely Federal-State cooperation and collaboration;...the appropriate scope of water quality reviews;...[and] expectations for reasonable review times for various types of certification requests...” Some states have denied water quality permits for natural gas pipelines, blocking development of proposed projects.

The Executive Order on border-crossing infrastructure is intended to reform the Presidential Permit process for crude oil and petroleum product pipelines that traverse the borders with Canada and Mexico. It sets time limits for the Department of State to review and provide recommendations regarding permit applications and clarifies that the final decision to issue a permit rests with the President. The Order directs the Department of State to issue any necessary implementation regulations by May 29, 2020.

**Wheeler Testifies at House Panel**

**Key Points:**
- EPA Administrator Andrew Wheeler discussed the agency’s proposed Fiscal Year 2020 budget on Tuesday.
- Democrats on the Environment and Climate Change Subcommittee raised questions and criticisms regarding EPA policies and regulatory initiatives.

On April 9, the House Energy and Commerce Committee’s Subcommittee on Environment and Climate Change held a hearing entitled “The Fiscal Year 2020 EPA Budget”. The hearing allowed Members of Congress to raise regulatory and policy issues, including: climate change and EPA regulation of greenhouse gas emissions; ethanol mandates and the Renewable Fuel Standard (RFS); water quality issues; the Toxic Substances Control Act (TSCA); and per- and polyfluoroalkyl substances (PFAS) contamination.

In his opening statement, Chairman Frank Pallone (D-NJ) declared that President Trump’s budget proposal would cut EPA funding by more than any other cabinet-level agency. He asserted that the budget proposal would eliminate programs which ensure safe water and fails to deliver on promises the
Administration made on dangerous toxins such as on lead, and PFAS.

Subcommittee Chairman Paul Tonko (D-NY) expressed concern about the course of the EPA under Administrator Wheeler’s leadership. He noted that President Trump has proposed a 31 percent cut to the EPA’s budget from last year’s level. He also asserted that the proposal cuts EPA programs which the Administration claims are top priorities. He recalled that the House Energy and Commerce Committee reauthorized $1.3 billion in funding for the Drinking Water State Revolving Fund for Fiscal Year 2020. He added that the proposed budget funding request is far less than that amount. Tonko also contended that the Administration has sought to undo modest and achievable climate protections, including by “gutting” the Clean Power Plan, and vehicle emission standards.

Subcommittee Ranking Member John Shimkus (R-IL) emphasized the importance of getting a good return for investment on environmental protection for the billions of dollars spent by the EPA. He added that money is not the “end all, be all” when it comes to an agency’s success. He said that fidelity to laws, stewardship of the agency, concrete metrics, and responsiveness to environmental and public health concerns should also be considered in gauging the EPA’s success.

Administrator Wheeler stated that the budget proposal ensures that the EPA can continue President Trump’s agenda. He noted that there are 39 deregulatory actions in development that would save billions of dollars. He said water issues are the largest and most immediate environmental priority. He told the Subcommittee that the EPA is also moving forward to update the Lead and Copper Rule for the first time in over two decades. He stated that in February the EPA released the PFAS Action Plan to address emerging chemicals of concern. He added that EPA’s Trash Free Water Program is stepping up to help the international community capture marine debris and stop it from polluting the oceans. He said the proposed budget includes a 25 percent increase in the Water Infrastructure Finance and Innovation Act (WIFIA) from last year’s request. He said EPA issued eight WIFIA loans totaling more than $2 billion in federal credit assistance. Wheeler also reported that the EPA introduced a third round of funding which could support more than $12 billion in water infrastructure projects. He noted that the President signed the “America’s Water Infrastructure Act of 2018 (AWIA)” and EPA has proposed funding of $83 million to begin implementation. He added that the budget request includes $2 billion towards the two clean water State Revolving Funds (SRFs). He noted the EPA is moving forward with reforms to reduce air pollution that will help more communities reach attainment of the National Ambient Air Quality Standards (NAAQS). Wheeler also reported that the EPA is working to ensure that chemicals produced in commerce are safe for public use. He said that the EPA continues to meet the major statutory deadlines of the amended TSCA. He stated that the EPA finalized a ban on the retail sales of Methylene Chloride for consumer paint and coating removal. Wheeler added that the EPA has a healthy and robust enforcement program.

**Senate Subcommittee Hears Testimony on Pipeline Safety**

**Key Points:**
- A week after a House hearing on the topic, the Senate’s Transportation and Safety Subcommittee reviewed pipeline safety issues.
- As in the House hearing, Senators questioned the Administrator of the Pipeline and Hazardous Materials Safety Administration
regarding the status of congressionally-mandated rulemakings.

- Congress will begin work this year on reauthorization of the Pipeline Safety Act.

On April 10, 2019, the Senate Commerce Committee’s Transportation and Safety Subcommittee held a hearing titled “Pipeline Safety: Federal Oversight and Stakeholder Perspectives”. Senators on both sides of the aisle expressed an interest in developing a bipartisan pipeline safety reauthorization bill. Several Senators raised the Pipeline and Hazardous Materials Safety Administration’s (PHMSA) backlog in rulemakings mandated by Congress in the “Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011” (P.L. 112-90) and the “Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2016” (P.L. 114-183). PHMSA Administrator Skip Elliott assured the Subcommittee that the agency is making progress to closing out mandates through the pending Safety of Gas Transmission Pipelines final rule, Safety of Hazardous Liquid Pipelines final rule, and the Valve Installation and Rupture Detection Standards Notice of Proposed Rulemaking (NPRM).

Subcommittee Chair Deb Fischer (R-NE) expressed interest in learning from Administrator Elliott “about the status of the outstanding rulemakings.” Fischer later remarked that “Congress is greatly interested in PHMSA completing its outstanding mandates…” In response, Elliott explained that the agency has:

- Sent the Safety of Hazardous Liquid Pipelines final rule to the Office of Management and Budget;
- Sent the Safety of Gas Transmission Pipelines final rule to the Office of the Secretary of Transportation; and
- Is completing work on the Valve Installation and Rupture Detection Standards NPRM.

Pressed further by Fischer for the timing of action on pending rules, Elliott responded that he “hopes to have completed [most of the rules] this calendar year.”

Subcommittee Ranking Member Tammy Duckworth (D-IL) commented that the failure to complete the mandated rulemakings is “unacceptable.” Duckworth asked Elliott whether the President’s “Reducing Regulations and Controlling Regulatory Costs” Executive Order (E.O. 13771) is slowing the progress of pending PHMSA rulemakings. Elliott responded by emphasizing that the Executive Order applies “Department-wide” and therefore has not had “a real impact on PHMSA.” He also told Duckworth that “within PHMSA, our focus has been…[on] implementing these mandates.”

Senator Ed Markey (D-MA) focused his comments and questions on his legislation, the “Leonel Rondon Pipeline Safety Act” (S. 1097). He pressed the witnesses to endorse provisions of the bill that would require: the adoption of Safety Management Systems (SMS); and certification of changes to pipeline systems by professional engineers. Markey described the Merrimack Valley gas distribution system incident as a “disaster that looked like Armageddon.”

Upcoming Hearings and Events

**April 15**

**New Mexico Oil and Gas Development:** The House Natural Resources Committee’s Subcommittee on Energy and Mineral Resources will hold a field hearing in Santa Fe, New Mexico titled “Oil and Gas Development: Impacts on Air Pollution and Sacred Sites”.
**April 18**

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

**June 25-26**

**Natural Gas Pipeline Safety Regulations:**
The Pipeline and Hazardous Materials Safety Administration (PHMSA) will convene a meeting of its Gas Pipeline Advisory Committee (GPAC). As detailed in the meeting notice, the “GPAC will be considering the gathering line component of the proposed rule titled ‘Safety of Gas Transmission and Gathering Pipelines,’ which was published in the Federal Register on April 8, 2016, (81 FR 20722) and the associated regulatory analysis.”

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

**HEALTH**

**House Ways and Means Passes Drug Pricing Bill**

**Key Points:**
- The House Ways and Means Committee favorably reported the “Prescription Drug Sunshine, Transparency, Accountability and Reporting (STAR) Act of 2019” (H.R. 2113), as amended, unanimously by voice vote.
- The bill would address transparency and public reporting by manufacturers to improve accountability and provide a better understanding of the market.

On April 10, the House Ways and Means Committee held a markup of the “Prescription Drug Sunshine, Transparency, Accountability and Reporting (STAR) Act of 2019” (H.R. 2113). The bill was favorably reported, as amended, unanimously by voice vote.

This legislation combines four bipartisan bills: “Public Disclosure of Drug Discounts Act” (H.R. 2115); “Samples Act” (H.R. 2064); “Stopping the Pharmaceutical Industry from Keeping drugs Expensive (SPIKE) Act of 2019” (H.R. 2069); and a bill “To amend title XVIII of the Social Security Act to require certain manufacturers to report drug pricing information with respect to drugs under the Medicare program, and for other purposes” (H.R. 2087). It would require drug manufacturers to publicly justify large price increases; require applicable manufacturers to report to the Secretary the total aggregate monetary value and quantity of samples provided; require the Secretary to conduct a study on Medicare Part A drug costs; require the Secretary to publicly disclose aggregate rebates, discounts, and other price concessions achieved by pharmacy benefit managers on a public website; and require all manufacturers to submit information to the Secretary on the average sales price of Part B drugs.

During opening statements, Chairman Richard Neal (D-MA) and Ranking Member Kevin Brady (R-TX) noted the bipartisan nature of the legislation and the importance of increased transparency from drug manufacturers. Representative Lloyd Doggett (D-TX) questioned if the bill does enough to ensure that manufacturers disclose accurate information. He argued that nothing in the bill requires drug manufacturers to disclose anything that would threaten their discretion.

Representative George Holding (R-NC) offered an amendment that was later withdrawn which would have eliminated the provision in the bill that would require “unprecedented” reporting from private...
companies when their products launch at a price above an arbitrary threshold.

**Senate Finance Questions Pharmacy Benefit Managers**

**Key Points:**
- The Senate Finance Committee held a hearing titled “Drug Pricing in America: A Prescription for Change, Part III.”
- Questions focused on the rebate negotiations, rebate transparency, competition in the health care sector, and patient out-of-pocket costs.

On April 9, the Senate Finance Committee held a **hearing** entitled: “Drug Pricing in America: A Prescription for Change, Part III.” Topics discussed in the hearing included: (1) Rebates; (2) Transparency; (3) Management Tools; (4) Consolidation; (5) Pharmacy Fees; (6) Generics/Biosimilars; (7) Drug Shortages/Sole Source Drugs; (8) Medicaid/Spread Pricing; (9) List Prices/Out-of-Pocket Cap; (10) Value-Based Pricing; and (11) National Drug Code.

Committee members expressed interest in rebate negotiations by pharmacy benefit managers (PBMs), especially how the negotiations impact list prices and how rebate savings are passed on for the benefit of consumers. Ranking Member Ron Wyden (D-OR) criticized PBMs for placing barriers between consumers and lower priced medications in order to recover higher rebates. He suggested negotiating rebates as a percentage of list prices creates higher drug prices and reduces out-of-pocket (OOP) savings for consumers. There was a bipartisan call for increased transparency into these negotiations.

Chairman Chuck Grassley (R-IA) expressed concern with growing consolidation of PBMs and health plans and noted the Federal Trade Commission (FTC) is evaluating the impact of this integration on competition. Senator Bill Cassidy (R-LA) and Senator James Lankford (R-OK) pointed to the use of pharmacy fees, particularly Direct and Indirect Remuneration (DIR) fees, as a burden on independent pharmacies and a cause of industry consolidation.

PBM representatives contended the majority of rebates are passed on to plans and reflected in lower premiums or beneficial cost-sharing for consumers. They expressed openness to transparency legislation, particularly if data on rebate negotiations remains confidential. Witnesses also expressed opposition to the Trump Administration’s proposed rebate rule, advocating instead for a cap on OOP costs and a reduction in patent exclusivity periods to increase the number of generics and biosimilars in the market.

**Upcoming Hearings and Meetings**

**April 17**

**CER:** The Alliance for Health Policy will hold a briefing on “Right Care, Right Patient, Right Time: The Role of Comparative Effectiveness Research.”

**Part B:** The Council for Affordable Health Coverage will hold a briefing on “The ABCs of Medicare Part B: Affordability Challenges for Physician-Administered Drugs & Proposals for Reform.”

For more information about healthcare issues you may [email](mailto:info@williamsandjensen.com) or call Nicole Razinski Bertsch or George Olsen at 202-659-8201. Thomas McGrath contributed to this section.
TRADE

China Trade Deal Developments

Key Points:
- Reports state U.S. and China now agree to enforcement offices as part of a deal.
- Potential for easing tariffs on China.

On Wednesday, Treasury Secretary Steven Mnuchin stated that the U.S. and China have largely agreed on an enforcement mechanism for a bilateral trade deal. In an interview with CNBC Secretary Mnuchin clarified that both sides have agreed that they “will establish enforcement offices that will deal with the ongoing matters.” He also indicated in that interview that the deal is very close to finished with only a few “technical issues” left to work out. Secretary Mnuchin has refused to comment on whether or not the deal will lead the U.S. to lift tariffs on $250 billion worth of Chinese goods. However, in the past, President Trump has said some tariffs would remain on Chinese goods to ensure China is living up to its commitments. He indicated that the 25 percent tariffs on $50 billion worth of Chinese goods would remain, but did not say if any of the 10 percent tariffs on $200 billion worth of Chinese goods would be lifted. Senator Rob Portman (R-OH) declared in a speech on the Senate Floor that he believes it is very likely that the U.S. will lift all of its Section 301 tariffs and China will in turn lift its retaliatory tariffs. Senator Portman added that if China does not live up to its commitments the U.S. would be able to quickly reimpose its unilateral tariffs.

USTR Drafts Retaliation List in Response to EU, WTO Airbus Ruling

Key Points:
- USTR released a list of European products that may be hit with retaliatory tariffs in response to WTO’s Airbus ruling.
- House Republicans generally are supportive of U.S. retaliatory tariffs.
- EU warns of their own retaliatory tariffs on Boeing.

On Monday, the Office of the U.S. Trade Representative (USTR) issued a list of European products that will be hit with retaliatory tariffs as part of the U.S.’ World Trade Organization (WTO) dispute against the European Union (EU) for subsidies the EU provides to Airbus. Products subject to retaliatory tariffs include civil aircraft from France, Germany, Spain or the United Kingdom and a variety of agricultural products, including seafood, cheeses, olives and olive oil from all EU member states. Ranking Member of the House Ways & Means Committee Representative Kevin Brady (R-TX) expressed support for USTR’s decision to impose the retaliatory tariffs. Representative Brady argued that, “if there’s no consequences Europe won’t change their ways.”

In response to the U.S. tariffs, the European Commission promised its own retaliatory tariffs against the U.S. On Tuesday, a Commission spokesman said the WTO would soon give the EU authorization to retaliate against the U.S. for subsidies it provides to Airbus. In a statement to the press Airbus called the U.S. list “unjustified” and said it expected the EU retaliation to be greater than what the WTO authorizes for the U.S. On Tuesday, President Trump cited the WTO’s ruling against EU subsidies to Airbus and the forthcoming U.S. retaliation in claiming that Europe would soon stop taking advantage of the U.S. Senate Finance Committee Chairman Chuck Grassley (R-IA) commended the Trump administration for following international norms and awaiting WTO authorization for its retaliation rather than unilaterally imposing tariffs on the EU.
USMCA Update

Key Points:

- Mexico approves workers’ rights legislation.
- House Democrats still have issues with Section 232 steel and aluminum tariffs.

Late Thursday, Mexico’s lower house of Congress overwhelmingly approved a workers’ rights bill, legislation that U.S. House Speaker Nancy Pelosi (D-CA) considers key to winning over Democrats wary of a revamped North American trade pact. Mexican President Andres Manuel Lopez Obrador said after Speaker Pelosi’s comments he does not want to give the U.S. any motive to reopen negotiations of the pact, which concluded last year. President Obrador said in a briefing on Thursday, “[i]t is in our benefit to have this treaty, and for there to be no excuse for opening up negotiations again.”

Representative Ron Kind (D-WI) told reporters this week that U.S. Trade Representative (USTR) Robert Lighthizer continues to meet with House Democrats in an attempt to win support for USMCA. Representative Kind noted that House Democrats continue to advocate that the U.S. Section 232 tariffs on aluminum and steel issue be resolved before Congress will move forward with the USMCA. Reports indicate that the Section 232 tariffs are likely to remain in place until the USMCA is ready to be presented to Congress for a vote.

April 17 is the deadline when the ITC report on the USMCA is now expected, which is one requirement for USMCA to be considered under the Trade Promotion Authority expedited process.

U.S.-Japan Trade Talks

Key Points:

- Trade discussions between the USTR and Japan begin on Monday.
- Agriculture Secretary predicts a quick deal.
- USTR negotiating objectives include financial services, food safety commitments, simplified customs procedures, and rule-of-origin provisions.

Today, the Office of USTR confirmed that bilateral trade talks with Japan are set to begin Monday in Washington, D.C. Media reports have suggested Japanese Prime Minister Shinzo Abe will travel to the U.S. in late April and President Trump will visit Japan in May for ceremonies related to the Japanese Emperor (who is abdicating thereby setting up a transition), and again in June for the G-20 meeting. Agriculture Secretary Sonny Perdue said on Thursday, after speaking with USTR Lighthizer, that he believed the USTR could secure a “quick agreement.” Secretary Perdue stated, “I hope we can come to a very quick agreement with Japan over maybe some temporary [agriculture] provisions and hash out the many other issues that take longer in this area.”

Japanese officials have reportedly finalized the topics they intend to discuss with the U.S. for a free trade agreement on goods and some services, but will plan to rebuff any requests for auto restrictions or currency provisions. USTR’s negotiating objectives for its Japan talks include a section on financial services, an area it hopes to expand for U.S. financial service suppliers in any deal, as well as the Administration’s intent to secure “enforceable and robust” sanitary and phytosanitary commitments that make “clear that each country can set for itself the level of protection.
it believes to be appropriate to protect food safety and plant and animal health in a manner consistent with its international obligations.”

The Office of USTR also said it intends to “[p]rovide for simplified customs procedures for low-value goods and a more reciprocal de minimis shipment value” following requests made by several industry groups throughout the stakeholder input process. USTR Lighthizer added that he expects to request rule-of-origin provisions that would increase content requirements for auto parts made in either of the two countries.

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

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