This Week in Congress


**Senate** – The Senate confirmed the nominations of Brian Bulatao to be an Under Secretary of State, and Jeffrey Rosen to be Deputy Attorney General.

Next Week in Congress


**Senate** – The Senate may consider H.R. 2578 and supplemental disaster relief appropriations legislation.

TAX

Senate Finance Committee Creates Taskforces to Address Tax Extenders

**Key Point:**
- *Senate Finance Committee Chairman Grassley (R-IA) and Ranking Member Wyden (D-OR) organized a group of task forces aimed at finding solutions to address temporary tax provisions that have expired or are set to expire.*

This week, Senate Finance Chairman Grassley (R-IA) and Ranking Member Wyden (D-OR) announced the formation of several bipartisan taskforces to evaluate temporary tax provisions, also known as tax extenders. The taskforces will examine tax policies within the following issue areas: workforce and community development, health, energy, business cost recovery, and a combined group consisting of individual, excise and other temporary policies. The goal of the taskforces is to find possible solutions that would provide long-term certainty.

According to Chairman Grassley: “[i]t’s past time for Congress to end its bad habit of waiting until the last minute to extend temporary tax policy. This type of tax policy is meant to encourage long-term growth and investment. I encourage stakeholders to view this as an opportunity to come to the table and work with us to find long-term solutions.” The list of taskforces can be found below. Note that Chairman Grassley and Ranking Member are *ex officio* members of every task force.

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Update on Retirement Legislation

Key Points:

- The full House is expected to consider the SECURE Act (H.R. 1994) next week after some provisions regarding section 529 were removed from the bill.

- Senators Portman (R-OH) and Cardin (D-MD) introduced the Retirement Security & Savings Act that would expand the savers tax credit, create a re-enrollment tax credit, simplify retirement plan rules for small businesses, expand 401(k) plans to include part-time workers, and make other retirement savings reforms.

The House will vote on the Setting Every Community Up for Retirement Enhancement (SECURE) Act (H.R. 1994) next week. The bill was passed by the Ways and Means Committee on a unanimous voice vote but faced criticisms about a provision that would allow section 529 plans to cover homeschooling expenses. That provision has since been removed from the overall bill.

On the Senate side, the Senate Finance Committee discussed retirement issues including the Retirement Enhancement and Savings Act (RESA) (S. 972). Also, Senators Portman (R-OH) and Cardin (D-MD) introduced the Retirement Security & Savings Act (S. 1431), which would expand the savers tax credit, create a re-enrollment tax credit, simplify retirement plan rules for small businesses, expand 401(k) plans to include part-
time workers, and make other retirement savings reforms. The Joint Committee on Taxation (JCT) recently published a document entitled “Present Law and Background Relating to Challenges in the Retirement System” that was presented during a Senate Finance hearing on May 14.

House Ways and Means Committee Holds Hearing on Climate Change

On May 15, the House Ways and Means Committee held a hearing entitled “The Economic and Health Consequences of Climate Change.” Topics discussed in the hearing included: (1) Health Care; (2) Business Incentives; (3) Carbon Pricing; (4) Innovative Technologies; (5) Green New Deal; (6) Climate Change Impacts; (7) Oil and Natural Gas Industry; (8) Nuclear Energy; and (9) Urban Planning.

Most of the conversation surrounded the potential health impacts of climate change and what should be done to reduce carbon emissions. Ranking Member Brady (R-TX) argued that a carbon tax is not a solution for addressing climate change challenges. He also contended that the best policies moving forward should be those that incentivize innovative technologies and make it more affordable for the developing world to adopt.

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

House Passes NFIP Extension Bill

Key Point:
- The bill would extend the authorization for the NFIP to September 30, 2019. The authorization is currently set to expire on May 31.

On May 14, the House passed the National Flood Insurance Program Extension Act (H.R. 2578) by voice vote. The bill, introduced by House Financial Services Committee Chairwoman Maxine Waters (D-CA) and Ranking Member Patrick McHenry (R-NC), would extend the authorization for the National Flood Insurance Program (NFIP) to September 30, 2019. The NFIP’s authorization is currently set to expire on May 31.

The House also passed three other financial services bills:
- The Kleptocracy Asset Recovery Rewards Act (H.R. 389), introduced by Representative Stephen Lynch (D-MA), which would establish a Kleptocracy Asset Recovery Rewards Program within the Department of the Treasury. The program would provide rewards to individuals furnishing information leading to the restraining, seizure, forfeiture, or repatriation of stolen assets linked to foreign government corruption. The bill passed the House by voice vote.
- The Building Up Independent Lives and Dreams (BUILD) Act (H.R. 1060), introduced by Representative Barry Loudermilk (R-GA), which would allow nonprofit organizations offering mortgage loans for charitable purposes
to use certain alternative forms to satisfy disclosure requirements. The bill passed the House by voice vote.

- The Banking Transparency for Sanctioned Persons Act (H.R. 1037), introduced by Representative Denver Riggleman (R-VA), which would require the Secretary of the Treasury to report to Congress semiannually on a list of the licenses issued to financial institutions to provide services to countries and persons subject to certain U.S. sanctions. The bill passed the House by voice vote.

Senate Banking and House Financial Services Committees Hold Hearings on Federal Financial Regulators

Key Points:

- The Committees received testimony from Federal Reserve Vice Chairman Randal Quarles, FDIC Chairwoman Jelena McWilliams, Comptroller of the Currency Joseph Otting, and NCUA Chairman Rodney Hood.
- Topics discussed in the hearings included regulatory reform, the Volcker Rule, CECL, leveraged lending, financial technology, cybersecurity, international insurance standards, and the Community Reinvestment Act.

This week, the Senate Banking Committee and the House Financial Services Committee held separate hearings on oversight of the federal prudential regulators. The Committees received testimony from Federal Reserve Vice Chairman for Supervision Randal Quarles, Federal Deposit Insurance Corporation (FDIC) Chairwoman Jelena Williams, Comptroller of the Currency Joseph Otting, and National Credit Union Administration (NCUA) Chairman Rodney Hood. Senate Banking Committee Chairman Mike Crapo (R-ID) noted that S.2155 was passed nearly a year ago and each regulator has taken steps to implement it. He raised concerns with certain aspects of recent proposals, including the Community Bank Leverage Ratio (CBLR), urging that it be set at 8 percent. He stressed the need to simplify the Volcker Rule by removing the accounting prong and revising the covered funds definition. Ranking Member Sherrod Brown (D-OH) emphasized the importance of bank regulation, raising concerns with the number of rules “torn up” over the past year and a half. He expressed concern that deregulation will lead to another financial crisis. He noted that former Federal Reserve Chairs Ben Bernanke and Janet Yellen and former Treasury Secretaries Timothy Geithner and Jack Lew recently wrote a 10-page letter this week raising concerns about one of the Administration’s “rollbacks on the safety of our financial system.”

House Financial Services Committee Chairwoman Maxine Waters (D-CA) expressed concern with proposals to weaken stress testing for the largest financial institutions. She raised concerns that regulators are “kowtowing” to President Trump’s deregulatory agenda. She said the Committee will not tolerate actions that threaten the stability of the financial system. She suggested that S. 2155 is contributing to bank consolidation, pointing to the SunTrust/BB&T merger. Ranking Member Patrick McHenry (R-NC) said the Dodd-Frank Act (DFA) imposed hundreds of new regulations and restrictions. He stated that even after ten years not all of the regulations have been finalized. He said S. 2155 was a bipartisan bill which balanced financial stability and
consumer protection with the need for regulatory relief. He said failure to swiftly implement S. 2155 will lead to additional bank consolidation.

Crapo noted that the recent letter sent by several former Federal Reserve members was in regards to a Financial Stability Oversight Council (FSOC) rule. Quarles said the letter was in regards to the FSOC’s proposed rule focusing their efforts on an activities-based approach to financial stability regulation. Crapo expressed support for moving to an activities-based approach. He asked if the letter addressed any other measure of S. 2155, to which Quarles responded in the negative. Senator Tina Smith (D-MN) said the letter raised concerns with the FSOC’s approach of targeting activities rather than Too Big to Fail institutions. She said the letter suggested that entity designations could take six years or more under the proposal. She asked if this concern is valid. Quarles said the regulators just received the letter and are examining it. He said this conclusion is based on a number of contingent assumptions. He suggested that the process would not take six years.

Ranking Member Brown and several Representatives raised concerns with the risks posed by the growth of leveraged lending. They suggested that the regulators have failed to act to address this risk. Quarles said the regulators have done a careful analysis of whether a major repricing of leveraged loans would affect financial stability, suggesting that it would not. He said they have carefully examined the regulatory response to developments in underwriting, which could affect a business downturn. He said the banking agencies identified areas for improvement in leveraged lending underwriting practices. He stated that the FSB has begun an examination of where collateralized loan obligations (CLOs) are held around the globe, stating that they will have greater granularity later in the year. He said there is not a risk to financial stability, but there are issues with how leveraged lending could affect the business cycle.

Senators Tina Smith (D-MN), Catherine Cortez-Masto (D-NV), and Bob Menendez (D-NJ) and Representatives Nydia Velazquez (D-NY), Rashida Tlaib (D-MI), and Katie Porter (D-CA) raised concerns with the efforts to revise the Community Reinvestment Act (CRA). Otting said the OCC initiated the rewrite of the CRA and they have been soliciting feedback for 15 months. He said they are focused on what qualifies under the CRA, noting that the current limit is $1 million. He stated that they are looking at expanding the assessment areas. He stated that OCC is examining how to better evaluate CRA compliance. He stressed the need to create a mechanism to assess aggregate CRA activity.

Members of both parties, including Senator Doug Jones (D-AL) and Representatives Gregory Meeks (D-NY), Brad Sherman (D-NY), Blaine Luetkemeyer (R-MO), David Scott (D-GA), Carolyn Maloney (D-NY), Steve Stivers (R-OH), French Hill (R-AR), and Jennifer Wexton (D-VA), raised concerns that the Current Expected Credit Loss (CECL) model being considered by the Financial Accounting Standards Board (FASB) will negatively affect the availability of capital, particularly during a downturn. McWilliams said community banks have raised significant concerns with CECL implementation. She noted that the rule is being implemented by FASB, so the FDIC is limited in what it can do. She said banks lack clarity on how to
implement CECL, stating that FDIC is working to ease implementation. She said changes to CECL would have to be made by FASB. Quarles said the Federal Reserve is monitoring CECL and is examining its potential impacts. He said there have received widely varying assessments of CECL’s impacts. He said the Federal Reserve has proposed a phase-in process for CECL so they can monitor for adverse consequences. He said they can adjust other regulations if they find adverse impacts from CECL.

Representatives Roger Williams (R-TX), Ted Budd (R-NC), Lee Zeldin (R-NY) and Bryan Steil (R-WI) raised concerns with the negotiations at the International Association of Insurance Supervisors (IAIS) to create an international capital standard (ICS). They argued that the state-based system of insurance regulation has worked well and expressed opposition to applying European-style capital requirements and regulations in the U.S. Quarles said the Federal Reserve participates in international insurance negotiations as part of “Team USA.” He emphasized that the ICS is voluntary and cannot be directly imported into the U.S. He asserted that it cannot achieve its goal if it leaves out an approach that works for the U.S. He stated that the U.S. negotiating team has created “space in the process” for a U.S. group capital standard to be equivalent to the European approach. He said the regulators are now working on the concrete implementation, which should come out shortly.

House Oversight Committee Holds Hearing on the CFPB Payday Loan Rule

Key Point:
- Chairman Raja Krishnamoorthi (D-IL) criticized the decision to repeal the CFPB’s 2017 payday loan regulation.

On May 16, the House Oversight and Government Reform’s Economic and Consumer Policy Subcommittee held a hearing entitled “CFPB’s Role in Empowering Predatory Lenders: Examining the Proposed Repeal of the Payday Lending Rule.” Chairman Raja Krishnamoorthi (D-IL) said the hearing would examine the proposed repeal of the Consumer Financial Protection Bureau’s (CFPB) 2017 payday lending rule. He stated that the CFPB spent five years studying the payday lending industry. He said most payday loan consumers wind up paying more in fees than they originally borrowed. He said interest rates on payday loans approach 400 percent. Krishnamoorthi asserted that payday and auto title lenders “succeed when their borrowers fail,” noting that 90 percent of fees come from people who take out 7 or more loans to repay their original loan. He said the 2017 payday lending rule was meant to stop debt traps by requiring payday and other short-term lenders to assess whether people can afford to repay. He suggested that there is overwhelming public support for this rule. He criticized the decision to repeal the rule based on no new research.

Ranking Member Michael Cloud (D-TX) said the Dodd-Frank Act (DFA) has made it harder for many Americans to access the financial system. He suggested that the regulatory burdens imposed by the DFA have pushed people towards payday loans. He said the CFPB could have tried to make payday loans
safer through improved disclosure and enhanced enforcement, but instead sought to kill the industry. He said the CFPB’s analysis projected an 80 percent decline in the number of loans commissioned, while an industry study showed a 90 percent decline. He stated that the CFPB ignored the impact of its rule on unbanked and underbanked people. Cloud noted that studies show that when access to small dollar consumer credit is restricted people turn to illegal and unregulated lenders, like loan sharks. He said studies also showed that lack of access to small dollar loans also leads to consumers bouncing checks and filing for bankruptcy at higher rates. He said the CFPB ignored the role that states play in regulating the market, noting that all 50 states have a regulatory regime.

Upcoming Hearings and Meetings

May 21

**HUD:** The House Financial Services Committee will hold a hearing entitled “Housing in America: Oversight of the U.S. Department of Housing and Urban Development.”

**Beneficial Ownership:** The Senate Banking Committee will hold a hearing entitled, “Combatting Illicit Financing by Anonymous Shell Companies through the Collection of Beneficial Ownership Information.” Witnesses will include: Kenneth Blanco, Director of the Financial Crimes Enforcement Network (FinCEN), U.S. Department of the Treasury; Steven D’Antuono, Section Chief, Financial Crimes Section, Federal Bureau of Investigation (FBI); and Grovetta Gardineer, Senior Deputy Comptroller for Bank Supervision Policy, Office of the Comptroller of the Currency (OCC), U.S. Department of the Treasury.

May 22

**Disaster Preparedness:** The House Transportation and Infrastructure Committee’s Subcommittee on Economic Development, Public Buildings, and Emergency Management will hold a hearing entitled “Disaster Preparedness: DRRA Implementation and FEMA Readiness.”

May 31

**Financial Technology:** The Securities and Exchange Commission’s (SEC) Strategic Hub for Innovation and Financial Technology (FinHub) will hold its 2019 FinTech Forum to discuss distributed ledger technology and digital assets. The event will include panels on: (1) Capital Formation Considerations; (2) Trading and Markets Considerations; (3) Investment Management Considerations; and (4) Distributed Ledger Technology Innovations: Industry Trends and Specific Use Cases for Financial Markets.

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

House Energy Subcommittee Advances Ten Energy Bills

Key Points:
- On Thursday, the Energy Subcommittee of the House Energy and Commerce Committee voted to report ten energy bills.
- The bills include energy efficiency and energy cybersecurity legislation.

On May 16, the House Energy and Commerce Committee’s Energy Subcommittee held a markup and approved ten bills to address energy efficiency, workforce, and cybersecurity issues.

Subcommittee Chairman Bobby Rush (D-IL) noted the bipartisan support for most of the bills on the agenda. He expressed hope that a consensus will be achieved on all the proposals by the full Committee markup. He noted the bills to reauthorize the Energy Efficiency and Conservation Block Grant program (H.R. 2088) and the Weatherization Assistance Program (H.R. 2041). He said the Subcommittee would also consider legislation to reauthorize grants for improving the energy efficiency of public buildings (H.R. 2119) and a bill to establish a smart energy and water efficiency management program (H.R. 2665). He also expressed support for a bill to implement smart building technologies in federal agencies (H.R. 2044). Rush promoted his bill, the “Blue Collar to Green Collar Jobs Development Act of 2019” (H.R. 1315), which would establish a nationwide program to train underserved groups in energy related industries, including manufacturing, engineering, and construction. Rush also highlighted the cybersecurity bills on the Subcommittee’s agenda and emphasized that all enjoy “overwhelming bipartisan support.” He expressed support for the “Energy Emergency Leadership Act” (H.R. 362), which would create a new Department of Energy (DOE) assistant secretary position with jurisdiction over energy security.

Subcommittee Ranking Member Fred Upton (R-MI) noted six of the bills address energy workforce and efficiency programs, and the remaining four address cybersecurity preparedness. He stated most of the bills represent a bipartisan consensus, particularly the energy cybersecurity bills which he noted the Committee advanced in the 115th Congress. He emphasized the importance of energy cybersecurity, noting that the nation's top 100 pipelines supply more than 84 percent of U.S. energy. Upton highlighted his bill, the “Pipeline and LNG Facility Cybersecurity Preparedness Act” (H.R. 370). He explained that the legislation would implement a coordinated government approach to ensuring a secure nationwide flow of energy. He also expressed support for the other energy cybersecurity bills.

Full Committee Ranking Member Greg Walden (R-OR), in his opening statement, noted seven of the 10 bills trace back to bipartisan work in the previous Congress. He expressed support for elevating DOE’s leadership in energy cybersecurity, as well as the energy efficiency and workforce proposals.

Full Committee Chairman Frank Pallone (D-NJ), in his opening statement, emphasized the importance of energy efficiency to address climate change and support jobs. He expressed support for legislation to reauthorize funding for energy efficiency grants. He praised work on the energy cybersecurity bills, including H.R.
370, which he explained “would require the Secretary [of Energy] to carry out a program to establish policies and procedures that would improve the physical and cyber security of natural gas transmission and distribution pipelines, hazardous liquid pipelines, and liquefied natural gas facilities.” Pallone added that H.R. 370 “is a modest but critically important bill to ensure secure, reliable energy delivery.”

The Subcommittee reported the following bills to the full House Energy and Commerce Committee:

- Legislation “to amend the Energy Independence and Security Act of 2007 to reauthorize the Energy Efficiency and Conservation Block Grant Program” (H.R. 2088);
- The “Weatherization Enhancement and Local Energy Efficiency Investment and Accountability Act” (H.R. 2041);
- Legislation “to amend the Energy Policy Act of 2005 to reauthorize grants for improving the energy efficiency of public buildings” (H.R. 2119);
- The “Blue Collar to Green Collar Jobs Development Act of 2019” (H.R. 1315);
- The “Smart Grid and Water Efficiency Act of 2019” (H.R. 2665);
- The “Smart Building Acceleration Act” (H.R. 2044);
- The “Enhancing Grid Security through Public-Private Partnerships Act” (H.R. 359);
- The “Cyber Sense Act of 2019” (H.R. 360);
- The “Energy Emergency Leadership Act” (H.R. 362); and
- The “Pipeline and LNG Facility Cybersecurity Preparedness Act” (H.R. 370).

Legislative and Regulatory Developments

Energy and environment legislative and regulatory developments this week included:

- **Oil and Gas Wastewater Management:** On May 15, the Environmental Protection Agency (EPA) issued a press release soliciting input on its draft “Study of Oil and Gas Extraction Wastewater Management Under the Clean Water Act”. EPA notes that the study “takes a holistic look at how the agency, states, tribes and others view the current state of regulation and management of wastewater from the oil and gas industry and provides insight into how this wastewater might be returned to beneficial use in the water cycle.” Public comments are due by July 1, 2019.

- **Summer Energy Market Forecast:** On May 16, the Federal Energy Regulatory Commission (FERC) released its “Summer 2019 Reliability and Energy Markets Assessment”. The Assessment provides a “high level summary of anticipated reliability challenges for the upcoming operating season and corresponding prospective assessment of electric and natural gas markets.” FERC issued the Assessment during its May open meeting.

- **Onshore Drilling Civil Penalty Adjustments:** On May 17, the Bureau of Land Management (BLM) published a final rule titled “Onshore Oil and Gas Operations—Annual Civil Penalties
Inflation Adjustments”. The rule “adjusts the level of civil monetary penalties contained in…BLM…regulations governing onshore oil and gas operations as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and consistent with applicable Office of Management and Budget (OMB) guidance.”

- **Funding for Produced Water Treatment R&D**: On May 13, the Department of Energy’s (DOE) Office of Fossil Energy announced up to $5 million in federal funding for cost-shared research and development (R&D) projects under the “Funding Opportunity Announcement [for] Low Cost, Efficient Treatment Technologies for Produced Water”. The selected projects will develop the commercialization of treatment technologies and “reduce the amount of waste water from oil and natural gas production operations”.

- **Legislation to Phase-Out Fossil-Fuel Vehicles**: On May 15, Senator Jeff Merkley (D-OR) and Representative Mike Levin (D-CA-49) released a “Zero-Emission Vehicles Act of 2019”. The legislation would implement a “Federal Zero-Emissions Vehicle Standard” and require that “by 2030, 50% of sales for new passenger vehicles are Zero Emissions Vehicles”. The legislation would increase the mandate by 5% each year, reaching 100% by 2040. The standard would apply to new vehicles.

- **Offshore Well Control Rule Revisions**: On May 15, the Department of Interior’s Bureau of Safety and Environmental Enforcement issued a final rule titled “Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Blowout Preventer Systems and Well Control Revisions”. The rule “revises requirements for well design, well control, casing, cementing, real-time monitoring (RTM), and subsea containment”. The rule becomes effective on July 15, 2019.

**Upcoming Hearings and Meetings**

**May 21**

**Climate Change**: The Senate Agriculture, Nutrition and Forestry Committee will hold a hearing on “Climate Change and the Agricultural Sector.”

**Health and the Environment**: The House Energy and Commerce Committee’s Subcommittee on Oversight and Investigations will hold a hearing on “Undermining Mercury Protections: EPA Endangers Human Health and the Environment.”

**Renewable Energy**: The Senate Energy and Natural Resources Committee will hold a hearing to “Examine Renewable Energy and Energy Efficiency Efforts in the U.S.”

**Appropriations**: The House Appropriations Committee will hold a markup of the “Fiscal Year 2020 Energy and Water Development, and Related Agencies Appropriations Act”.

**May 22**

**Infrastructure Legislation**: The House Energy and Commerce Committee will hold a hearing on the “Leading Infrastructure For Tomorrow’s America Act” (H.R. 2741).
legislation is intended to “rebuild and modernize the Nation’s infrastructure to expand access to broadband and Next Generation 9-1-1, rehabilitate drinking water infrastructure, modernize the electric grid and energy supply infrastructure, redevelop brownfields, strengthen health care infrastructure, create jobs, and protect public health and the environment…”

May 23

**Climate Change:** The House Select Committee on the Climate Crisis will hold a hearing on “Creating a Climate Resilient America.”

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.”

June 27

**Bulk-Power System Reliability:** The Federal Energy Regulatory Commission (FERC) will convene a “Technical Conference regarding reliability of the Bulk-Power System”. As detailed in the agenda, the conference will cover: “Status of the Electric Reliability Organization and Reliability”; “The Impact of Cloud Based Services and Virtualization on BES Operations, Planning and Security”; “Managing Changes in Communications Technologies on the New Grid”; and “Reliability Issues Associated with Reliability Coordinator Seams”.

For more information about energy and environment issues you may email or call Frank Vlossak at 202-659-8201. Sam Brooks, Joshua Hurlebert, and Thomas McGrath contributed to this report. Updates on energy and environment issues are also available on twitter.

**HEALTH**

**CMS Finalizes Rule to Lower Drug Prices in Medicare Advantage and Part D**

**Key Points:**
- The Centers for Medicare and Medicaid Services released the final rule making changes to Medicare Advantage and Medicare Part D to improve transparency.
- CMS chose not to adopt proposed changes to the six protected classes which would have allowed plan sponsors to exclude protected class drugs from formularies.

On May 16, the Centers for Medicare and Medicaid Services (CMS) issued the final rule entitled “Modernizing Part D and Medicare Advantage to Lower Drug Prices and Reduce Out of Pocket Expenses.” The rule aims to improve transparency for beneficiaries and improve plans ability to negotiate better prices.

CMS Administrator Seema Verma said “CMS is delivering on price transparency because patients have a right to know the cost of their healthcare services before they receive them.” She noted Part D plans will be required to “adopt tools that provide clinicians with information that they can discuss with their patients on out-of-pocket costs for prescription drugs at the time a prescription is written.”
Under the rule, CMS requires Part D plans to adopt one or more electronic Real Time Benefit Tools which can be integrated with an ePrescribing system or electronic health record by January 1, 2021. This will help inform prescribers of lower-cost alternatives than may be available which can improve medication adherence and lower beneficiary out-of-pocket costs.

For Medicare Advantage, CMS finalizes regulations allowing plans to implement step therapy for Part B drugs as a utilization management tool. The regulations include safeguards to ensure beneficiaries still have timely access to medically necessary treatments. Step therapy will only apply to new starts of medication, must be approved by the pharmacy and therapeutics committee, and use a shorter decision-making timeframe for requests or denial appeals.

In the final rule, CMS chose not to adopt proposed changes to the six protected classes. In the proposed rule, CMS offered exception that would have allowed Part D sponsors to exclude a protected class drug from a formulary if the price increased above a certain threshold or exclude a protected class drug if the drug only represented a new formulation of an existing single-source drug or biological product. Though it chose not to implement the changes, CMS does remain concerned beneficiaries are receiving substantially smaller discounts for protected class drugs compared to the commercial market.

Read the final rule here and a fact sheet here.

House Passes Drug Pricing Legislation

Key Points:
- The bill included legislation to strengthen the Affordable Care Act and increase access to generic drugs.

On May 16, the House passed H.R. 987, the Strengthening Health Care and Lowering Prescription Drug Costs Act by roll call vote 234-183. Only five Republicans voted for the package: Representatives Brian Fitzpatrick (R-PA), Jaime Herrera Beutler (R-WA), John Katko (R-NY), Chris Smith (R-NJ), and Fred Upton (R-MI).

The legislation combined several bills reported out of the House Energy and Commerce Committee:
- The “Creating and Restoring Equal Access to Equivalent Samples (CREATES) Act of 2019” (H.R. 965), which would allow generic companies to sue brand-name drugmakers for not selling them samples needed for testing during the FDA approval process;
- The “Protecting Consumer Access to Generic Drugs Act of 2019” (H.R. 1499), which would ban “pay-for-delay” agreements where a drugmaker pays a generic developer to delay market entry as part of a patent settlement agreement;
- The Bringing Low-cost Options and Competition while Keeping Incentives for New Generics (BLOCKING) Act of 2019” (H.R. 938), which would prevent generic drugs from delaying market entry to keep other generic
products off the market through what’s called “generic parking;”

- A bill to provide that the rule entitled “Short-Term, Limited Duration Insurance” shall have no force or effect (H.R. 1010), which would block the administration’s short-term health plan rule;
- The “State Allowance for a Variety of Exchanges (SAVE) Act” (H.R. 1385), which would provide $200 million for states to establish their own insurance exchanges;
- The “Expand Navigators’ Resources for Outreach, Learning, and Longevity (ENROLL) Act of 2019” (H.R. 1386), which would provide $100 million annually for ACA navigators, which help consumers enroll in health plans; and
- The “Marketing and Outreach Restoration to Empower (MORE) Health Education Act of 2019” (H.R. 987), which would provide $100 million annually for HHS to carry out outreach and educational activities for the federal insurance exchange.

May 22

**Single Payer:** The House Budget Committee will hold a hearing on “Key Design Components and Considerations for Establishing a Single-Payer Health Care System.”

For more information about healthcare issues you may email or call Nicole Razinskie Bertsch or George Olsen at 202-659-8201. Thomas McGrath contributed to this section.

**TRADE**

**China Deal Developments**

Key Points:

- USTR announced it will be seeking comment on the remaining $300 billion of Chinese goods not yet subject to tariffs.
- Secretary Mnuchin reported that trade talks will continue soon in Beijing, and President Trump could meet with President Xi at the G20 in June.

On May 17, the U.S. Trade Representative (USTR) published a request for comment and notice of a June 17 public hearing to discuss taking further action in the form of an additional ad valorem duty of up to 25 percent on products of China. The proposed product list has an approximate annual trade value of $300 billion, and it covers essentially all products not currently covered in the current Section 301 investigation. The proposed product list excludes pharmaceuticals, certain pharmaceutical inputs, select medical goods, rare earth materials, and critical minerals.

Despite the setbacks, U.S. Treasury Secretary Steven Mnuchin said Thursday he expects that
Trump Administration officials will soon return to China to continue trade talks. Secretary Mnuchin stated that he believed the U.S. had been “very close to a historic agreement with China” before the talks broke down earlier this month. At a Senate Appropriations subcommittee hearing Secretary Mnuchin said he thinks President Trump expects to meet with President Xi at the G20 at the end of June. The timing of the G20 is fortuitous for President Trump, as the USTR comment process will be concluding around the same time and could offer him some additional leverage during discussions.

**USMCA Gaining Steam, Agreement Reached to Lift Steel and Aluminum Tariffs on Canada and Mexico**

Key Points:

- New optimism from Democrat leadership signals that USMCA could be ratified by Congress this year.
- USTR Lighthizer plans to skip the upcoming APEC meeting to continue USMCA discussions with Congress.
- On Friday, an agreement was reached to lift the tariffs imposed on steel and aluminum imports from Canada and Mexico. Retaliatory tariffs by Mexico and Canada would also be lifted.

House Speaker Nancy Pelosi (D-CA) and Democratic leaders are increasingly optimistic they can get to a yes on the USMCA trade pact after their latest sit-down with USTR Robert Lighthizer. Speaker Pelosi reported that USTR Lighthizer finally seemed to take heed of their demands to modify the trade deal after weeks of the two sides mostly talking past each other. Some House Democrats have demanded that the Trump Administration reopen the text of the deal to write in stronger language to enforce the deal’s labor and environment standards. They have also expressed the need to take out language they say would lock in high prescription drug prices. Trump Administration officials have repeatedly shut down the idea of reopening the deal, and both Canada and Mexico have vocally opposed revisiting the text.

“[e]verybody wants to do it, I saw Mrs. Pelosi say that she wanted labor reforms done by the Mexicans and they proceeded to do the labor reforms. And I think there is just a broad bipartisan acknowledgment that this is in Americans’ best interest and we ought to get it done.”

Additionally, USTR Lighthizer announced this week that he will not be attending the upcoming Asia-Pacific Economic Cooperation (APEC) meeting because of “critical congressional engagements”. The annual meeting of APEC trade ministers will take place May 17-18 in Chile. USTR Lighthizer’s chief of staff, Jamieson Greer, will lead a U.S. delegation at the meeting. Some Democrat Representatives see this move as an acknowledgement from USTR Lighthizer that the concerns of the Democrats are important to him. USTR Lighthizer did not attend last year’s APEC meeting.

On Friday, an agreement was announced which would lift the Section 232 national security-based steel and aluminum tariffs on Canada and Mexico within 48 hours. Under the agreement quotas would not be imposed in place of the tariffs. Canada and Mexico will lift their retaliatory tariffs on U.S. goods as part of the agreement. Canada and Mexico will also
halt their proceedings against the tariffs at the World Trade Organization. The U.S. and Canada issued a joint statement announcing the agreement. Mexican President Andrés Manuel López Obrador is expected to announce the agreement shortly. The lifting of the tariffs eliminates a roadblock to USMCA ratification by Canada and Mexico, which had expressed opposition to moving forward while the tariffs were still in place.

Upcoming Hearings and Meetings

**May 22**

**USMCA:** The House Ways and Means Committee’s Subcommittee on Trade will hold a hearing entitled “Enforcement in the New NAFTA.” The hearing will take place at 10:00am in 1100 Longworth House Office Building.

*For more information about trade issues you may email [email](mailto:) or call Christopher Hatcher at 202-659-8201. Cullen Neely contributed to this section.*

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