TAX

House Votes to Repeal ‘Cadillac’ Tax

Key Points:

- H.R. 748 would repeal a tax on high-cost employer sponsored health insurance implemented by the ACA.
- The bill is unlikely to move on its own in the Senate and is more likely to be considered in a package with other health care tax issues such as the Medical Device Tax and the Health Insurance Tax.
- The bill, according to the JCT, is likely to cost $197 billion over the next ten years.

On Wednesday, the House of Representatives passed the Middle Class Health Benefits Tax Repeal Act of 2019 (H.R. 748) by a vote of 419-6. The bill would repeal a tax on high-cost employer sponsored health insurance implemented by the Affordable Care Act (ACA). The provision, commonly known as the ‘Cadillac’ tax, is set to take effect in 2020 and would place a 40 percent tax on individual

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insurance plans worth more than about $11,200 and family plans worth more than about $30,100.

According to the Joint Committee on Taxation (JCT), the bill is likely to cost $197 billion over the next ten years. The House did not offset the cost, which runs counter to the “Pay-Go” rule. The bill was considered under suspension of the rules (requiring a 2/3 vote), so technically Pay-Go did not apply.

The bill is unlikely to move on its own in the Senate and is more likely to be considered in a package with other health care tax issues such as the Medical Device Tax and the Health Insurance Tax (HIT).

Presidential Candidate Biden Proposes Capital Gains Tax Increase to Pay for Health Care

Key Point:
- Presidential candidate Joe Biden proposed, among many policies, to effectively double the capital gains tax rate in order to eliminate the income cap on the ACA’s tax credit eligibility, and to eliminate the ordinary business deduction for drugmakers’ advertising.

This week, Democratic presidential candidate Joe Biden introduced a plan to apparently tax capital gains at ordinary income rates for taxpayers earning over $1 million. The former Vice President’s plan would also make a number of policy changes on health care including eliminating the income cap on the ACA’s tax credit eligibility, and also eliminating the ordinary business deduction for drugmakers’ direct to consumer advertising.

Former Vice President Biden’s proposal explains that the highest tax rate on long-term capital gains (and dividends) is 20 percent and that his plan would “assure those making over $1 million will pay the top rate on capital gains, doubling the capital gains tax rate on the super wealthy.” It appears he is proposing taxing both capital gains and dividends at ordinary income rates for earners making over $1 million, though the exact details of the plan leave some details to be determined.

Debt Limit Negotiations Ongoing, Two Year Deal Possible for Budget Caps and Debt Limit

Key Points:
- Treasury Secretary Mnuchin says he and Democrats have agreed to a two-year debt limit increase as the government prepares to run out of money as soon as early September.
- Negotiators have yet to reach an agreement on provisions to offset some of the new spending increases as part of the budget discussions. The White House has stated that $150 billion in other cuts are needed in order to offset the increases.
- Some rumors suggest tax items like the SECURE Act could be in play for inclusions, but nothing decided or particularly clear

Treasury Secretary Steven Mnuchin on Thursday indicated that progress was being made on a budget deal with Democrats, but that significant provisions remained unsolved. The statement on Thursday follows a July 12 letter that Secretary Mnuchin sent to Speaker Pelosi. The Secretary said he had agreed with Democrats to a two-year debt limit increase, which he argues is crucial because the Treasury
Department could run out of money as soon as early September if Congress does not act.

However, it is important to note that President Trump has yet to sign off on any agreement and any deal would not be complete until he issued his approval. In addition, the White House and lawmakers have still not agreed on spending cuts that the Administration wants in order to offset some of the new spending increases as part of the budget discussions. The White House has stated that $150 billion in other cuts are needed in order to offset the increases. This does not have to be through tax provisions but could also be through spending limitations such as sequestration.

The treaties have languished for several years because of objections by Senator Paul. Senate Finance Committee Ranking Member Wyden (D-OR) praised the chamber for approving the protocols but criticized the Trump Administration for delaying three pending treaties with Chile, Hungary, and Poland due to reservations concerning the base erosion and anti-abuse tax enacted by the Tax Cuts and Jobs Act (TCJA). Senator Risch (R-ID) agreed with Wyden’s comments and predicted that the remaining three treaties will be ratified before the end of the year.

### Senate Ratifies Four Tax Protocols

**Key Point:**

- *After languishing for several years because of objections by Senator Paul (R-KY), the Senate moved to ratify tax protocols for Spain, Switzerland, Japan and Luxembourg.*
- *Three tax treaties remain pending in Senate Foreign Relations, but reservations for TCJA may slow those.*

This week, the Senate approved tax protocols with Spain, Switzerland, Japan, and Luxembourg. Senators Paul (R-KY) and Lee (R-UT) were the only two votes against ratifying the protocols with Switzerland and Japan. The treaty with Switzerland specifically prohibits bank secrecy laws from denying a request to disclose taxpayer information that “may be relevant” to help crack down on tax evasion. The protocol with Japan denies treaty benefits to corporations that claim dual residency in Japan and the United States and also reduces source country tax on dividends.

### Upcoming Hearings and Meetings

**July 24**

**Nominations:** The Senate Finance Committee will hold a hearing to consider the nominations of Brent James McIntosh, to be an Under Secretary of the Treasury for International Affairs; Brian Callanan, to be General Counsel for the Department of the Treasury; Brian McGuire, to be Deputy Under Secretary of the Treasury for Legislative Affairs; and Travis Greaves, to be a Judge of the United States Tax Court for a term of fifteen years.

**Tax Cuts and Jobs Act:** The House Small Business Committee will hold a hearing entitled “Is the Tax Cuts and Jobs Act a Help or Hindrance to Main Street?” The witnesses at the hearing will be: Jane Gravelle, Senior Specialist in Economic Policy, Congressional Research Service; Muneer Baig, Founder and CEO, SYSUSA, Inc.; and Justin Conger, President, Conger Construction Group.

*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 and Senate Committees Hold Hearings on Facebook's Proposed Cryptocurrency

Key Points:
- Democrats on both Committees expressed opposition to Facebook moving forward with its digital currency proposal.
- Some Republicans were more receptive to the proposal, arguing that Congress should not stifle innovation.

This week, the Senate Banking Committee and the House Financial Services Committee held separate hearings to examine Facebook’s proposal to create a digital currency (Libra) and a digital currency wallet (Calibra). Senate Banking Committee Chairman Mike Crapo (R-ID) stated the U.S. Treasury is concerned that cryptocurrencies could be used by money launderers and terrorist financiers. He said financial institutions have expressed concerns over how the Libra payment system will work, how it will be managed, and how it will interact with Facebook. He said despite the uncertainties he believes Facebook’s goal is commendable because many Americans do not have access to traditional banking. He concluded that his biggest concern is the threat to privacy, and Congress needs to give consumers real control over their data. He recommended setting up an enforcement system to ensure that the collection process is not abused and data is adequately protected. Senate Banking Committee Ranking Member Sherrod Brown (D-OH) stated “Facebook is dangerous” and he asserted that the company does not respect the technology that it is “playing” with. He declared that Facebook only cares about making money, and it designs its algorithms to addict people to its services. He said Facebook has been used to spread propaganda in other countries that have led to riots and political killings. He said Facebook has demonstrated over and over again that it should not be trusted.

House Financial Services Committee Chairwoman Maxine Waters (D-CA) said she has serious concerns with Facebook’s plans. She suggested that Facebook is enlisting others to expand its reach, including MasterCard, Visa, PayPal, Uber, Lyft, and Spotify. She suggested that Facebook is trying to create a new financial system to rival the U.S. financial system. She stated that there are serious privacy and regulatory concerns with Libra, noting that Libra would own government assets on a massive scale, and suggesting that this would concentrate government influence in the hands of a few elites. Waters said Facebook has already harmed massive numbers of people, comparable to Wells Fargo and Equifax. She stated that she sent a letter to Facebook urging them to halt their plans until regulators can examine their proposal more carefully. She said the Committee would examine legislation blocking big tech companies from entering the financial industry and launching their own currencies. House Financial Services Committee Ranking Member Patrick McHenry (R-NC) stated that Washington should not be where “innovation goes to die.” He stated that Congress should not immediately block new proposals. He said there are serious concerns with Facebook, but he hopes to conduct thoughtful government oversight. He stated Congress should not attempt to deter cryptocurrency innovation. He said he disagrees with policymakers who feel there should be a “permission-based” economy. He stated that Congress should work with
Facebook to ensure that consumers are protected, rather than attempting to ban new products before they can begin. He said the Committee should examine whether the regulatory framework meets the demands of new innovations.

Democrats on both Committees, as well as some Republicans, expressed opposition to Facebook moving forward with Libra. They raised concerns related to data privacy, the lack of a clear regulatory regime, market consolidation, money laundering, illicit finance, and the potential impact on monetary policy. Several Republican members spoke more positively towards the project, including Senator Pat Toomey (R-PA), who stated it is “wildly premature” to call for Congress to act to prevent what could be a constructive innovation. He stated that there are significant potential benefits from blockchain and cryptocurrency, suggesting that they could lower costs and enhance privacy. He said Libra is an idea worth exploring. Representatives French Hill (R-AR) and Andy Barr (R-KY) emphasized the need to encourage rather than stifle innovation.

Senators Tom Cotton (R-AR) and John Kennedy (R-LA) and Representatives Sean Duffy (R-WI), Steve Stivers (R-OH), and Ted Budd (R-NC) raised concerns that Facebook and other social media platforms are politically biased against conservatives. Duffy asserted that Libra is a “brilliant” and “innovative” idea, but stressed that it should be available to everyone regardless of their social views. Stivers expressed concern that the Libra Association could vote to exclude companies like Chick-fil-A, which has social views that Facebook disagrees with.

House Financial Services Committee Approves Bills on Credit Scoring and Disclosure Requirements

Key Point:
- The Committee passed bills to enhance disclosures related to climate risk and outsourcing, as well as bills relating to credit scoring, disaster recovery, extending the statute of limitations, and enforcement.

On July 16, the House Financial Services Committee held a markup and approved eight financial services bills:
- The Clarity in Credit Score Formation Act of 2019 (H.R. 3629), introduced by Representative Stephen Lynch (D-MA), would amend the Fair Credit Reporting Act to establish Federal oversight of the development of credit scoring models by the Bureau of Consumer Financial Protection, as amended, by a 33-25 roll call vote;
- The Reforming Disaster Recovery Act (H.R. 3702), introduced by Representative Al Green (D-TX), would authorize the Secretary of Housing and Urban Development to provide disaster assistance to States, Puerto Rico, units of general local government, and Indian tribes under a community development block grant disaster recovery program, as amended, by a 58-0 roll call vote;
- The Student Borrower Credit Improvement Act (H.R. 3621), introduced by Representative Ayanna Pressley (D-MA), would amend the Fair Credit Reporting Act to remove adverse information for certain defaulted or delinquent private education loan borrowers who
demonstrate a history of loan repayment, as amended, by a 33-25 roll call vote;

- The PCAOB Whistleblower Protection Act of 2019 (H.R. 3625), introduced by Representative Sylvia Garcia (D-TX), would establish a whistleblower program at the Public Company Accounting Oversight Board, as amended, by voice vote;

- The PCAOB Whistleblower Protection Act of 2019 (H.R. 3625), introduced by Representative Sylvia Garcia (D-TX), would establish a whistleblower program at the Public Company Accounting Oversight Board, as amended, by voice vote;

- The Stronger Enforcement of Civil Penalties Act of 2019 (H.R. 3641), introduced by Representative Katie Porter (D-LA), would enhance civil penalties under the Federal securities laws, as amended, by a 33-25 roll call vote;

- **H.R. 3701**, introduced by Representative Vicente Gonzalez (D-TX), would establish a statute of limitations for certain actions of the Securities and Exchange Commission (SEC), as amended, by a 33-25 roll call vote;

- The Outsourcing Accountability Act of 2019 (H.R. 3624), introduced by Representative Cindy Axne (D-IA), would amend the Securities Exchange Act of 1934 to require the disclosure of the total number of domestic and foreign employees of certain public companies, as amended, by a 33-25 roll call vote; and

- The Climate Risk Disclosure Act of 2019 (H.R. 3623), introduced by Representative Sean Casten (D-IL), would amend the Securities Exchange Act of 1934 to require issuers to disclose certain activities relating to climate change, as amended, by a 34-25 roll call vote.

### Regulators Sworn in at the CFTC and SEC

**Key Point:**
- Heath Tarbert was sworn in as CFTC Chairman and Allison Herren Lee was sworn in as a member of the SEC.

On July 15, Heath Tarbert was sworn in as Chairman of the Commodity Futures Trading Commission (CFTC), replacing J. Christopher Giancarlo. Tarbert had previously served as Assistant Secretary for International Markets and acting Under Secretary for International Affairs at the Treasury Department. Tarbert was confirmed by the Senate to a term as a CFTC Commissioner expiring April 13, 2024.

Separately, Allison Herren Lee was sworn in as a member of the Securities and Exchange Commission (SEC) on July 8. Lee was confirmed by the Senate for a term expiring June 5, 2022. Most recently, Lee taught courses on financial regulation and corporate law, and she had previously served in various roles at the SEC, including as Counsel to Commissioner Kara Stein and as Senior Counsel in the Division of Enforcement.

### Upcoming Hearings and Meetings

**July 23**

**Cannabis:** The Senate Banking Committee will hold a hearing entitled “Challenges for Cannabis and Banking: Outside Perspectives.” The witnesses at the hearing will be: Senator Cory Gardner (R-CO); Senator Jeff Merkley (D-OR), Rachel Pross, Chief Risk Officer, Maps Credit Union; Joanne Sherwood, President and CEO, Citywide Banks; Garth Van Meter, Vice President of Government Affairs, Smart Approaches to Marijuana; and
John Lord, CEO and Owner, LivWell Enlightened Health.

July 24
**SunTrust/BB&T Merger:** The House Financial Services Committee will hold a hearing entitled “The Next Megabank? Examining the Proposed Merger of SunTrust and BB&T.”

July 25
**Alternative Credit Data:** The House Financial Services Committee’s Task Force on Financial Technology will hold a hearing entitled “Examining the Use of Alternative Data in Underwriting and Credit Scoring to Expand Access to Credit.”

**Investor Advisory Committee:** The SEC will hold a meeting of its Investor Advisory Committee. The agenda for the meeting includes: (1) Discussion Regarding the SEC Approach to Regulation in Areas with Limited Competition; (2) Discussion Regarding Trends in Investment Research and the Impact of MiFID II (which may include a recommendation from the Market Structure Subcommittee); (3) Discussion Regarding the Proxy Process (which may include a recommendation from the Investor as Owner Subcommittee); (4) Presentation on the Work of the SEC Office of the Advocate for Small Business Capital Formation; and (5) Presentation on the Work of the SEC Office of Minority and Women Inclusion.

July 29
**Fixed Income Market Structure Advisory Committee:** The SEC will hold a meeting of its Fixed Income Market Structure Advisory Committee. The agenda for the meeting includes updates and presentations from subcommittees.

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

**HEALTH**

**House Energy and Commerce Committee Marks Up Health Care Bills**

**Key Points:**
- The House Energy and Commerce Committee held a markup of 25 bills covering communications, consumer protection, energy, and health care issues.
- The eight health care bills included legislation to reauthorize public health programs, improve drug pricing transparency, eliminate surprise medical billing, and increase federal assistance to Medicaid programs in U.S. territories.

On July 17, the House Energy and Commerce Committee held a markup of 25 bills. The Committee favorably reported the following health care bills by voice vote:

- H.R. 2781, Educating Medical Professionals and Optimizing Workforce Efficiency and Readiness (EMPOWER) for Health Act of 2019, as amended;
- H.R. 728, Title VIII Nursing Workforce Reauthorization Act of 2019;
- H.R. 776, Emergency Medical Services for Children Program Reauthorization Act of 2019;
- H.R. 2035, Lifespan Respite Care Reauthorization Act of 2019;
- H.R. 2296, More Efficient Tools to Realize Information for Consumers (METRIC) Act, as amended;
- H.R. 2328, Reauthorizing and Extending America’s Community Health (REACH) Act, as amended.

Most debate in the markup centered on the Reauthorizing and Extending America’s Community Health (REACH) Act. The Committee adopted a substitute amendment which incorporated the “No Surprises Act” (H.R. 3630) and the “Territories Health Care Improvement Act” (H.R. 3631) into the underlying bill. Representative Raul Ruiz (D-CA) offered an amendment to the substitute which added an independent dispute resolution (IDR) process to the surprise billing provisions. Ruiz argued the IDR process was a necessary addition to the median benchmark rates in order to ensure that payments reflect the acuity levels of different providers. Ranking Member Greg Walden (R-OR) acknowledged his previous reservations about including an IDR process, but supported the amendment because it limited factors eligible for consideration by an arbiter to: (1) the complexity of a patient’s care; and (2) the quality of a provider’s services. Additional amendments were accepted to the surprise billing provisions, including measures requiring the Department of Health and Human Services (HHS) to evaluate the methodology behind the benchmark rates and the impact of those rates on provider networks.

The Committee also favorably recommended a drug pricing package, now titled the “More Efficient Tools to Realize Information for Consumer (METRIC) Act.” The bill would require drug manufacturers to submit a justification report to HHS for any list price increase that exceeds 10 percent, or 20 percent over a three-year period. The reporting requirements include the research and development, marketing, and advertising costs of a product. The Representative Jan Schakowsky (D-IL) offered a manager’s amendment to ensure information is not reported in a misleading fashion, in part by adding a requirement for companies to disclose other manufacturers that contributed to development of a drug. Other provisions mandate disclosures of discounts offered by pharmacy benefit managers and reporting on aggregate product sample distribution to providers.

The Committee also favorably reported bills to reauthorize public health programs and increase federal funding to Medicaid programs in U.S. territories.

**Treasury Expands High Deductible Health Plan Coverage**

**Key Point:**

- The U.S. Department of the Treasury issued a new notice expanding preventative care benefits provided under high deductible health plans for chronic conditions.

On July 17, the U.S. Department of the Treasury issued a new notice to expand preventative care benefits provided by high deductible plans (HDHP) without a deduction or with a deductible below the applicable minimum deductible. The new preventative care services related to medical services and prescription drugs for chronic conditions.

Generally, HDHPs may not provide benefits for any year until the minimal deductible is met; however, Section 223 includes a safe harbor for
HDLPs that do not have a deductible for preventative care. Past guidance from Treasury stated preventative care generally does not include any service or benefit to treat an existing illness.

In response to the President’s June 2019 Executive Order, Treasury had made the determination certain medical services and prescription drugs to treat chronic conditions should be considered preventative services. It recognizes failure to treat these conditions can exacerbate conditions and lead to more extensive medical interventions.

Read the notice and list of preventative care services [here](link).

**Upcoming Hearings and Meetings**

**July 22**

**Drug Prices:** Brookings Institution will hold a discussion on “Louisiana’s prescription drug experiment: A model for the nation?”

**Opioids:** The National Academy of Medicine will hold a webinar on “Webinar: Tapering Guidance for Opioids: Existing Best Practices and Evidence Standards.”

**July 23**

**Seniors:** The Senate Finance Committee will hold a hearing on “Promoting Elder Justice: A Call for Reform.”

**July 24**

**Ebola:** The Senator Foreign Relations Committee will hold a hearing on “Confronting Ebola: Addressing a 21st Century Global Health Crisis.”

**E-Cigarettes:** The House Oversight and Reform Committee will hold a hearing on “Examining JUUL’s Role in the Youth Nicotine Epidemic: Part I.”

**July 25**

**Patient Care:** The Bipartisan Policy Center will hold an event on “Improving Care for Individuals with Complex Needs.”

**Drug Pricing:** The Hill will host a discussion on “Policy Prescriptions: Lowering Drug Prices.”

**Opioids:** The House Homeland Security Committee will hold a hearing on “Homeland Security Implications of the Opioid Crisis.”

**July 26**

**Drug Pricing:** The House Oversight and Reform Committee will hold a hearing on “The Patient Perspective: The Devastating Impacts of Skyrocketing Drug Prices on American Families.”

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

**U.S.-China Trade Developments**

*Key Points:*
- Trade talks over the phone continue between the countries’ trade representatives, but no details have been reported.
- President Trump is frustrated that China has not made large agricultural purchases.
- China remains skeptical of the U.S. promise to roll back Huawei restrictions as Congress has introduced legislation that would prevent Huawei’s removal from the Entity List.

The Office of the U.S. Trade Representative (USTR) has confirmed that USTR Robert Lighthizer and Treasury Secretary Steve Mnuchin continued talks with their Chinese counterparts over the phone on Thursday. Almost three weeks ago, President Trump announced that China would begin making large agricultural purchases in exchange for allowing non-national security related sales of Huawei in the U.S. President Trump has indicated that he is frustrated with China’s lack of action on agriculture. USTR has been vague about the details of the recent talks with China, but Commerce Secretary Wilbur Ross warned Wednesday that a deal is not likely to be reached soon.

Further complicating things, a bipartisan group of lawmakers on Tuesday introduced legislation that would prevent the Administration from relaxing export restrictions on Huawei. The Commerce Department in May placed Huawei on the Entity List, requiring U.S. companies to apply for a license from the Bureau of Industry and Security before exporting products to Huawei. The Defending America’s 5G Future Act would prevent the Commerce Department from removing Huawei from the Entity List without an act of Congress and give Congress the authority to “disallow” waivers granted to companies seeking to do business with Huawei. The bill would also “codify” an executive order Trump signed in May that lays the groundwork for a ban on imports of Chinese information and communications technology. For now, banning Huawei remains a very popular bipartisan policy in Congress which would make it much harder for the Trump Administration to reach a deal. The bill is unlikely to be enacted, but it represents firm opposition by some in Congress on the issue.

Chinese Foreign Ministry Spokesperson Geng Shuang said recently, possibly focusing on these types of proposals, “[w]ith a Cold-War mentality and a zero-sum game mindset, the relevant U.S. Senators and House Representatives have long been seeing China through tinted glasses.” He added that, “They proposed various bills that have negative contents on China to contain China’s development and damage its relationship with the US.”

**House Democrat Negotiations with USTR on USMCA**

*Key Points:*
- USTR Lighthizer and House Democrats had a series of productive meetings this week, and have more scheduled for next week.
- House Ways & Means Committee Chairman Richard Neal (D-MA) suggested Democrats want to pass USMCA before the end of the year.
Some Senate Republicans continue to be skeptical that Democrats are negotiating in good faith.

USTR Lighthizer met with House Democrats this week to discuss the U.S.-Mexico-Canada Agreement (USMCA). The working group of Democrats, led by House Ways & Means Committee Chairman Richard Neal (D-MA), is negotiating with USTR Lighthizer to address the party's concerns on USMCA's labor, environment, enforcement, and pharmaceutical provisions. After the meeting said he was very encouraged by the talks. He told reporters that USTR Lighthizer has answered most of questions Democrats had, and now they can tailor their requests very specifically. He said, “much of the conversation was on labor and enforcement,” and added that the patent exclusivity time period for biologics issue was touched on.

Chairman Neal announced after the meeting with USTR Lighthizer that Congressional Democrats want to ensure a vote on the USMCA Agreement does not “languish into next year.” Speaker Pelosi has previously said reopening the deal was necessary to address Democrats’ concerns with enforceability. Trump Administration officials, including USTR Lighthizer, continue to resist changing the underlying deal but have offered small openings on that front. More meetings between the working group and USTR Lighthizer are scheduled for next week.

Senate Finance Committee Chairman Chuck Grassley (R-IA) and other Senate Republicans took to the Senate floor this week to advocate for the quick passage of the USMCA. Senator Grassley said he was glad that House Speaker Nancy Pelosi (D-CA) has formed a working group to work with USTR Lighthizer to address Democrats’ concerns with the pact. He argued that Speaker Pelosi wants to pass USMCA, but there are many other Democrats that do not want to vote on it because they see it as giving President Trump a win. Senator Mike Braun (R-IN) expressed dismay with Speaker Pelosi, accusing Democrats of shifting their demands from a Mexican labor reform law to stronger labor and environmental standards.

For more information about trade 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.