This Week In Congress


**Senate** – The Senate confirmed the nominations of Mark Esper to be Secretary of Defense and Stephen Dickson to be Administrator of the Federal Aviation Administration. The Senate passed H.R. 1327, which would extend the September 11th Victim Compensation Fund through Fiscal Year 2090.

Next Week In Congress

**House** – The House will be in recess.

**Senate** – The Senate is expected to consider H.R. 3877. The Senate is set to vote on the nominations of Kelly Craft to be Ambassador to the United Nations and David Norquist to be Deputy Secretary of Defense. The Senate may also vote on whether to override the President’s veto of resolutions disapproving weapons sales to Saudi Arabia, the United Arab Emirates, and other nations.

TAX

White House and Congress Agree on Debt Budget Deal

**Key Points:**
- H.R. 3877 passed the House on Thursday and would block automatic spending cuts under the Budget Control Act of 2011. The two-year budget deal would raise spending limits by $322 billion and suspend the federal debt ceiling for two years, until after the 2020 presidential and congressional elections.
- The bill includes $77 billion in offsets which mainly come from accounting changes and a two-year extension of customs user fees.
- Lawmakers chose not to include retirement or tax extender riders in the package, but those items are likely to be passed in an omnibus spending package of minibuses later in the year.

This week, the White House and congressional leaders came to an agreement on government spending levels for the next two years and on extending the debt limit. H.R. 3877 passed the House Thursday evening and would block
automatic spending cuts under the Budget Control Act of 2011. The two-year budget deal would raise spending limits by $322 billion and suspend the federal debt ceiling until after the 2020 presidential election. Of the $322 billion, $172 billion would go toward national defense while the remaining $150 billion would be spent on domestic programs. To offset the increased spending, the deal includes $77 billion in accounting changes and a two-year extension of customs user fees. The remaining offsets would come through an extension of the Budget Control Act’s mandatory sequestration preventions.

The agreement pledges “orderly and timely consideration” of next year’s, as well as the FY 2021, spending bills in order to avoid government shutdowns. The deal suggests that Congress will attempt to pass appropriation bills in smaller bunches rather than a continuing resolution or ‘CR.’

Senate Finance Committee Chairman Grassley (R-IA) had expressed interest in adding the House-passed Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 (H.R. 1994) to the House’s budget caps bill. However, ultimately no extraneous bills were added to the package. It’s likely that the retirement bill, along with tax extenders and Tax Cuts and Jobs Act technical corrections, will be included in an omnibus spending package of minibuses that could be passed in the fall or early winter. Senator Thune (R-SD), a member of the Finance Committee, said he suspects that “a number of extenders will be addressed, maybe some of the taxes in Obamacare” in a tax bill later this year.

House Passes Multiemployer Pension Funding Bill

Key Point:
- The House passed the Butch Lewis Act which would establish a Pension Rehabilitation Administration within the Department of the Treasury and a trust fund that would provide low-interest government-guaranteed loans that pension plans could pay back over the course of 30 years.

On Wednesday, the House passed legislation, in a 264-169 vote that ran along generally partisan lines, aimed at helping stabilize multiemployer pension plans in hopes of mitigating a future pension crisis. The bill, known as the Butch Lewis Act, would establish a Pension Rehabilitation Administration within the Department of the Treasury and a trust fund that would provide low-interest government-guaranteed loans that pension plans could pay back over the course of 30 years.

Opponents of the bill argue that it would be a bailout for private sector multiemployer pension plans and would set a bad precedent for other private industries or troubled public pensions. Supporters say the bill is necessary as there are 1,400 multiemployer plans covering roughly 10 million people in the United States and a large number of those plans that face the threat of running out of funds.

The issue is likely to continue to be a focus, having been the subject of a select committee in the last Congress. However, given the partisan divide on the bill the Senate is more likely to take a different approach to the issue.
The Joint Committee on Taxation’s technical explanation of the bill can be found here.

Update on President Trump’s Tax Returns

New York Governor Andrew Cuomo signed a law earlier this month that would allow the chairmen of Congress’s tax committees to request public officials’ state tax returns from the commissioner of the state’s Department of Taxation and Finance. In response, President Trump filed an emergency application requesting that House Ways and Means Committee Chairman Neal (D-MA) be barred from seeking Trump’s New York State tax filings before the President’s case is heard in court. A DC federal judge, Trevor McFadden, held a hearing on Trump’s motion on Thursday. Ways and Means Democrats argued in this hearing that the court lacks jurisdiction to enjoin the panel from using a New York law to request the President’s state tax returns.

In another development, House Ways and Means Chairman Neal called a meeting of the Ways and Means Committee on Thursday and released results from the Committee using IRC sec. 6103 in the early 1970’s to investigate then-President Nixon’s tax returns. Chairman Neal made the case that the fact the Committee had successfully used the authority before supported using the authority to seek President Trump’s returns from the IRS.

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

Senate Banking Committee Holds Hearing on Banking for Cannabis Businesses

Key Point:
- Senators Gardner (R-CO) and Merkley (D-OR) testified in support of the SAFE Banking Act, which would allow cannabis-related businesses to access banking services.
- Senator Menendez (D-NJ) introduced legislation, the CLAIM Act, to limit the legal exposure that arises from the conflict between state insurance laws and federal law.

On July 23, the Senate Banking, Housing, and Urban Affairs Committee held a hearing entitled “Challenges for Cannabis and Banking: Outside Perspectives”. Chairman Mike Crapo (R-ID) said that marijuana is a Schedule I drug and therefore financial transactions for marijuana-related commerce are not allowed to proceed through the American financial system. He said that the conflicting state-level and federal laws create complications for marijuana businesses. He expressed concern that Operation Choke Point punished certain industries due to “political pressure”. He said that this operation was “inappropriate”. He said that he would like to better understand how the SAFE Banking Act (S. 1200/H.R. 1595) would impact the financial system.

Ranking Member Sherrod Brown (D-OH) said that marijuana has been legalized or decriminalized in many states, and the legal cannabis industry is growing and often includes union representation. He said that these workers need to be treated the same way as workers in all other industries. He expressed concern that without access to the financial system marijuana businesses operate in the
shadows and deal with large amounts of cash. He said that banks willing to deal with these types of businesses are often subject to strict fees and regulations and are only allowed to offer the most basic financial services. He said that this problem impacts working-class Americans who are not directly employed by the marijuana industry. He expressed concern at the tension between federal and state laws. He said that banks and credit unions monitor the financial system for fraud and money laundering and therefore access to the banking system is critical. He said “we can’t afford to continue ignoring this industry”.

Senators Cory Gardner (R-CO) and Jeff Merkley (D-OR) testified in support of the SAFE Banking Act. Gardner said that the “cannabis issue is not going to go away”, noting that 47 states have legalized some form of cannabis. He said that the states are leading on this issue and the federal government has failed to respond. He said that he opposed cannabis legalization in Colorado, and despite his misgivings “the sky has not fallen” in Colorado. He said that Colorado has brought in over $1 billion in taxes from marijuana and legal marijuana’s effect on crime is unclear at this point. He said that the biggest challenge has to do with transactions being forced out of the financial system. He said that banks are worried about being punished for dealing with marijuana businesses. He said that business owners deal with large amounts of cash and this makes dispensary workers targets for theft. He said Congress must act. He said that the SAFE Banking Act and the STATES Act will allow “states to move at their own pace” and to help alleviate some of the problems that have been manifesting in recent years.

Senator Merkley said that the federal government is “making life miserable” for many Americans, arguing that “federal chaos” is good for money laundering, crime, and fraud. He said that across the U.S., businesses operating under state law face challenges when it comes to dealing with the financial system. He argued that cash operations without access to bank accounts are dangerous. He stated that it is difficult for marijuana businesses to access legal and financial services because providers of these services fear that they will be punished. He expressed concern that dealings in large amounts of cash pose a safety hazard. He said that marijuana provides important tax revenue for several states. He said that cash serves as an “invitation” to nefarious activity. He said that this is a “states’ rights” issue.

Senator Bob Menendez (D-NJ) said that New Jersey is in the midst of a large marijuana industry expansion and he expressed concern that these businesses are shut out of the financial and insurance industries. He said that insurers that offer their products to cannabis businesses face significant conflicts due to the differences between state and federal laws. He said that yesterday he introduced the CLAIM Act to limit the legal exposure that arises from the conflict between state and federal insurance laws.
SEC Holds Investor Advisory Committee Meeting

Key Point:
- The IAC discussed investment research under MiFID II, the proxy system, and regulation in areas with limited competition.

On July 25, the Securities and Exchange Commission’s (SEC) Investor Advisory Committee (IAC) convened a meeting and approved a recommendation regarding “Structural Changes to the US Capital Markets Re Investment Research in a Post-MiFID II World.” The IAC also discussed, but did not vote on, a recommendation entitled “Proposal for a Proxy Plumbing Recommendation.” IAC Chair Anne Sheehan (California State Teachers’ Retirement System) indicated that the IAC would hold a telephonic meeting in the next few weeks to vote on the proxy plumbing recommendation. The meeting also included a panel regarding the “SEC Approach to Regulation in Areas with Limited Competition,” where topics included market data, credit rating agencies and central clearing.

Chairman Jay Clayton said that the Committee will be talking about the SEC’s approach to regulation in areas where competition may be limited. He stated that competition brings down transaction costs for institutional and Main Street investors. Clayton’s said that Main Street investors need to be a priority when it comes to the proxy system. He questioned why Main Street investors are participating less in shareholder voting. He asked if the process is too cumbersome and whether shareholders are interested in the matters put before them. He asked whether shareholder submission and resubmission requirements are appropriate. Clayton said that MiFID II became effective in the EU last year and it changed how asset managers are required to pay for research in the EU. He stated that this has an impact on the U.S. and he noted that in 2017 the SEC issued three no-action letters providing guidance on how to respond to this situation. He said that the no-action letters expire next year and that something needs to be done to address the situation long-term.

Commissioner Robert J. Jackson, Jr. stated that it is important to reexamine whether past decisions effectively fostered competition. He said that former SEC Commissioners did not intend to limit competition but that it is important to reexamine certain regulations to see whether competition can be expanded. He said that regulators need to make sure that competition benefits investors.

Commissioner Allison Lee said that the issue of limited competition is “complicated terrain”. She said that the Committee’s draft recommendation on MiFID II is also an important topic to discuss. She stated that transparency is critical when it comes to who pays for research, how much is paid, and how payees can benefit. She stated that proxy plumbing issues are important and that shareholders’ equal rights need to be preserved.

FinTech Task Force Holds Hearing on the Use of Alternative Data Sources in Credit Scoring and Underwriting

Key Point:
- The Task Force discussed how alternative data sources can help expand access to credit.

On July 25, the House Financial Services Committee’s Task Force on Financial Technology held a hearing entitled “Examining the Use of Alternative Data in Underwriting
and Credit Scoring to Expand Access to Credit.” Chairman Stephen Lynch (D-MA) stated alternative data has the potential to expand credit access, but it also raises concerns over the nature and sources of its data points. He added that there is also significant regulatory uncertainty surrounding its use. He explained that the promise of FinTech lending has been to lower costs and bring new consumers into the market. He said today lenders use an array of financial and non-financial factors in their decision making. He argued that using this and other data could help 45 million Americans who have trouble accessing credit based on traditional factors alone.

Ranking Member French Hill (R-AR) stated that to determine a borrower’s credit worthiness marketplace lenders often use some form of alternative data. He noted that traditional lenders use FICO scores, three years of tax returns, credit card payment history, and other similar forms of data to determine a risk profile for borrowers. He said marketplace lenders combine FICO scores with other data points to better gauge borrowers’ character and economic situation. He argued that using these alternative data points has the potential to widen the universe of borrowers and provide greater access to affordable credit. He declared that he does not want overregulation to prevent the American consumer from being able to access affordable credit through this new methodology. He noted that there are still some problems in the marketplace lending industry, but he believes if regulation is properly balanced it will be a great help to almost 45 million Americans who currently have trouble accessing credit. Full Committee Ranking Member Patrick McHenry (R-NC) stated technology is creating new pathways for consumers to access credit. He said he is excited about the potential of alternative data, but stressed that Congress needs to ensure that the use of alternative data is non-discriminatory and protects consumer data and privacy.

Upcoming Hearings and Meetings

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: (1) Draft Recommendation for Investor Education Regarding Retail Notes; (2) Draft Recommendation on Certain Principal Transactions with Advisory Clients; (3) Updates from the Technology and Electronic Trading Subcommittee and ETFs and Bond Funds Subcommittee; (4) Content and Timeliness of Municipal Issuer Disclosures; and (5) Credit Ratings: Future Modifications or Status Quo.

July 30
Digital Currencies and Blockchain: The Senate Banking Committee will hold a hearing entitled “Examining Regulatory Frameworks for Digital Currencies and Blockchain.”

August 14

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

Senate Finance Marks Up Prescription Drug Package

Key Points:

- The Senate Finance Committee held a concept markup of the Prescription Drug Pricing Reduction Act.
- The bill included provisions to redesign the Medicare Part D benefit; cap out-of-pocket costs in Part D; institute an inflation rebate cap to penalize price increases; and change the Medicaid financing model for new expensive therapies.

On July 25, the Senate Finance Committee held a concept markup of the Prescription Drug Pricing Reduction Act (PDPRA) of 2019. The markup included discussion and amendments to the Chairman’s Mark, but did not introduce or amend legislative text. The Committee favorably recommended the bill, as modified, by voice vote, 19-9.

Committee Chairman Chuck Grassley (R-IA) repeatedly called attention to the bipartisan nature of provisions included in the PDPRA. He also highlighted the Congressional Budget Office (CBO) score, which projected the bill would result in $100 billion of taxpayer savings. Ranking Member Ron Wyden (D-OR) echoed the importance of achieving bipartisan support but warned that Democrats would hold up the bill if direct Medicare negotiation was not given a floor vote.

An amendment to waive the non-interference clause and allow Medicare to directly negotiate was offered by Senator Debbie Stabenow (D-MI), who argued that empowering Medicare to leverage its negotiating power was necessary to achieve cost savings in Medicare Part D that were equal to those observed in Veterans Affairs (VA) health coverage. Republicans expressed opposition to the amendment, contending that Medicare’s negotiating power would be contingent on creating a national formulary that restricted access to beneficiaries. The amendment was rejected by roll call vote, 12-16, with Senator Bob Menendez (D-NJ) as the only Democrat to vote against the amendment. Chairman Grassley acknowledged the debate on direct negotiation was “not going to go away” and cited recent reports indicating the House Ways and Means Committee was likely to waive the non-interference clause as part of its drug pricing package expected in September.

The other significant point of contention centered on a provision to institute inflation rebates, which would require manufacturers to pay rebates to Medicare for any price increase that exceeded limits set in the provision. Senator Pat Toomey (R-PA) offered an amendment to strike the language from the PDPRA, arguing it would undermine existing price competition between Part D plans and cause manufacturers to set higher launch prices for new products. Other Republicans expressed concern that the provision would serve as a de facto price control and reduce pharmaceutical innovation. Ranking Member Wyden defended the provision against the charge that it was a price control mechanism, saying it would merely limit subsidies. The amendment was rejected by roll call vote, 14-14, with Senator Menendez as the sole Democrat voting in favor and Senator Bill Cassidy (R-LA) and Chairman Grassley as the only Republicans voting against it.
Despite disagreement, there was bipartisan support for the redesign of the Part D benefit included in the bill, particularly the proposal to cap out-of-pocket beneficiary spending at $3,100. Members on both sides also expressed support for transparency measures included in the bill and expressed interest in working to ensure that a higher percentage of rebates negotiated by pharmacy benefit managers get passed on to consumers at the pharmacy counter.

Upcoming Hearings and Meetings

July 31

**Medicare for All:** The Heritage Foundation will hold an event on “Medicare for All: How Government-Run Health Care Would Impact Americans.”

**CBO:** The American Enterprise Institute will hold an event on “The Policy Simulation Library DC meeting: The Congressional Budget Office’s new health insurance model.”

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

TRADE

China Trade Developments with Face-To-Face Talks Resuming Next Week

**Key Points:**

- Huawei remains a key negotiating point, and Congress maintains bipartisan agreement that Huawei is a national security threat.
- President Trump continues to push for more agriculture purchases as the Chinese government reportedly approves tariff-free soybean purchase.

Next week, negotiators from U.S. and China will meet in Shanghai between July 30-31. The U.S. delegation will include USTR Lighthizer and Treasury Secretary Mnuchin. Ahead of the meeting China has called on the U.S. to stop using state power to damage Chinese companies, and has urged President Trump to implement the commitments he made regarding Huawei. Chinese Commerce Minister Zhong Shan has been appointed to handle negotiations with the U.S. After spending most of the past year in the relative shadows of the talks, Minister Zhong Shan has joined two conference calls with U.S. Trade Representative (USTR) Robert Lighthizer and Treasury Secretary Steven Mnuchin in recent weeks and is expected to be at the table when the two sides start meeting in Shanghai on Tuesday next week. A senior Trump administration official has confirmed that Minister Zhong Shan has dealt with USTR Lighthizer over the past two years. Larry Kudlow, Director of Trump’s National Economic Council, has warned a number of times in recent weeks that the inclusion of new “hard-liners” on the Chinese side could complicate efforts to secure a deal with China.

Agriculture Secretary Sonny Perdue told reporters Tuesday that President Trump is holding China accountable for its failure to deliver on promised agricultural purchases as the two sides resume talks. He said, “[s]ome of
[the purchases] have materialized, but not enough and we’re holding them accountable for that.” Last month, President Trump claimed that China agreed to purchase agriculture products when he and Chinese President Xi Jinping met at the G20 leaders’ summit. Earlier this month President Trump tweeted that China is “letting us down” by not increasing purchases, but Chinese officials have continually insisted that no deal on agriculture purchases was made. However, the Chinese government has given the go-ahead for five companies to buy up to three million tons of U.S. soybeans free of retaliatory import tariffs. The retaliatory tariff-free quota for 2 million to 3 million tons will be part of a goodwill gesture toward the U.S., and there could be a second round of exemptions depending on how the trade talks progress, according to insiders.

Ahead of the resumption of China talks some senators have warned that Congress will not allow Huawei to be a bargaining chip in negotiations. Senator Rick Scott (R-FL) said this week, “Huawei is a national security threat. The trade deal is, do we start having fair trade with China? I don’t believe we’ll ever have fair trade with China. They’re not going to stop stealing our technology or open up their markets.” Senator Richard Blumenthal (D-CT) added that, “[M]y fear is security will be compromised in using Huawei as a bargaining chip. It is a threat to our nation. I think that Huawei needs to be taken seriously as a security threat and I’m not convinced that the administration is doing so.”

USMCA Update

Key Points:

- USTR Lighthizer scheduled to meet with the House Democratic USMCA working group this morning (7/26) to discuss timing and enforcement issues.
- House chief deputy whip Representative Henry Cuellar (D-TX) predicts USMCA passage before the end of the year.
- House Democrats shifting to specific requests on USMCA as negotiations begin finalizing.

According to a Democratic Ways and Means Committee spokeswoman, USTR Lighthizer is scheduled to meet with the House Democratic working group on Friday morning to discuss enforcement and timing issues. The working group of Democrats, led by Ways and Means Chairman Neal (D-MA), is negotiating with USTR Lighthizer to address the party’s concerns on USMCA’s labor, environment, enforcement and pharmaceutical provisions. This week the working group met with USTR Lighthizer on Wednesday to discuss environment issues, but after the meeting Chairman Neal told reporters that his group would be trying to shape its requests more specifically going into the next meeting. Despite the lack of specifics, Democrats continue to cite progress in their discussions with USTR Lighthizer. In a statement after Wednesday’s meeting Chairman Neal told reporters that the working group and USTR Lighthizer will map out next steps in their consultation process at today’s meeting. He said, “[W]e also intend to work with USTR to map out a continuing and robust process -- including through our respective, able staffs --
for building on the working group and USTR's progress into the next phase in August.”

Some House Democratic leaders have recently gone on the record expressing optimism about passing USMCA in 2019. Representative Henry Cuellar (D-TX) made a statement this week that while some Democrats will always be a no vote, the number of Members who are open to a yes vote is growing. He said, “[m]y final prediction is very simple: Are we going to get it done this year? Yes.”

Upcoming Hearings and Meetings

July 30

USMCA: The Senate Finance Committee will hold a hearing on the USMCA. The witnesses at the hearing will be Paula Elaine Barnett, Owner, Paula Elaine Barnett Jewelry; the Honorable Matt Blunt, President, American Automotive Policy Council; James Collins, Chief Executive Officer, Corteva Agriscience; Derek Leathers, President and Chief Executive Officer, Werner Enterprises; the Honorable Tom Vilsack, President and Chief Executive Officer, U.S. Dairy Export Council; and Michael Wessel, President, Staff Chair, The Wessel Group, The Labor Advisory Committee for Trade Negotiations and Trade Policy.

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.