TAX

President Trump Backs Off of Support for Indexing Capital Gains

Key Points:
- President Trump rolled back his previous comments relating to unilaterally indexing capital gains to inflation.
- Instead, the President said he would prefer cutting taxes for middle-income workers but stated that he is not looking at a tax cut right because of the strong economy.
- Senate Finance Committee Chairman Grassley’s office said there have been no discussions with the White House on a payroll tax holiday.

On Thursday, President Trump said he is no longer looking to unilaterally index capital gains to inflation. The President’s comments came a day after he indicated that “a majority of the people in the White House” approve of the idea. Instead, President Trump stated that he would prefer cutting taxes for middle-income workers. However, he also dismissed the reports and concept of a temporary payroll tax cut. “I’m not looking at a tax cut now. We don’t need it; we have a strong economy,” Trump said in a response to a question on cutting payroll taxes.

The Committee for a Responsible Federal Budget estimated that a temporary single percentage point rate cut in the employee portion of the Social Security payroll tax would cost between $70 billion and $75 billion per year. Any payroll tax cut would require Congressional action. Michael Zona, a spokesman for Senate Finance Committee Chairman Chuck Grassley (R-IA) said that the Chairman and the White House have not discussed any payroll tax proposals.
Senate Finance Committee Releases Summary Reports on Long-Term Solutions to Temporary Tax Policy

Key Points:
- The Senate Finance Committee released three reports summarizing the work conducted by several bipartisan taskforces that examined temporary tax provisions that expired or will expire.
- The taskforces covered tax policies within the following issue areas: workforce and community development, energy, business cost recovery, health tax policies, and a combined group consisting of individual, excise, and other temporary policies.

Last week, Senate Finance Committee Chairman Chuck Grassley (R-IA) and Ranking Member Ron Wyden (D-OR) released three reports that summarize the work conducted by several bipartisan taskforces that analyzed temporary tax provisions that expired, or will expire, between December 31, 2017 and December 31, 2019. Included in the reports is feedback from stakeholder groups and individuals affected by these temporary tax policies – totaling more than 40 provisions.

The taskforces covered tax policies within the following issue areas: workforce and community development, energy, business cost recovery, health tax policies, and a combined group consisting of individual, excise, and other temporary policies. A separate taskforce was created to examine whether there is a core package of tax relief provisions that should be available when natural disasters strike. The taskforce summaries can be found below.

ENERGY – The taskforce summary report can be found HERE.

COST RECOVERY – The taskforce summary report can be found HERE.

INDIVIDUAL, EXCISE & OTHER EXPIRING POLICIES – The taskforce summary report can be found HERE.

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

SEC Approves Interpretation and Guidance Regarding Proxy Advisory Firms

Key Points:
- The SEC approved guidance clarifying how investment advisers can fulfill their fiduciary obligations while retaining proxy advisory firms.
- Chairman Jay Clayton said the SEC is also considering changes regarding the exemptions from federal proxy rules and the definition of the term “solicitation.”
- Commissioners Robert Jackson Jr. and Allison Herren Lee opposed the interpretation and guidance.

On August 21, the Securities and Exchange Commission (SEC) held an open meeting and approved two items: (1) Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers; and (2) Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice. The Commission approved both items by votes of 3-2, with Commissioner Robert Jackson Jr. and Commissioner Allison Herren Lee voting in opposition. The SEC posted a press release, which includes a fact sheet on the items approved.

Chairman Jay Clayton, in a statement, said the proxy process has become increasingly complex and proxy advisory firms have taken on a much greater role in the market. He stated that investment advisers are fiduciaries which owe duties of loyalty and care to their clients. He said the SEC’s rules provide flexibility to investment advisers in fulfilling their fiduciary duties. He stressed that while investment advisers can engage others to assist with their work they retain their fiduciary duty regardless. He reiterated that there is not and has never been a carve-out from the fiduciary duties for proxy voting. Clayton said the guidance reiterates these duties and provides examples of how these duties can be discharged, while noting that they are not the only way to do so. He said investment advisers will benefit from the examples of steps they can take to make sure decisions are made in clients’ best interests. He stated that the guidance will also be helpful to proxy advisory firms. Clayton explained that staff is also considering potential recommendations that the Commission propose rule amendments to Rule 14a-2(b), which provides exemptions from the information and filing requirements of the federal proxy rules. He stated that two of these exemptions commonly relied upon by proxy advisory firms were adopted decades ago and warrant a fresh look to determine whether changes are needed. He noted that he has asked the SEC staff to also consider whether the current rule definition of the term “solicitation” under the federal proxy rules should be amended to codify the interpretation being considered.

Commissioners Jackson and Lee argued the items being considered would be detrimental to investors and the proxy advisory market. Jackson said the guidance identifies steps institutional investors can take to ensure that their use of proxy voting advice complies with their fiduciary duties. He stated that many large institutions already take some of these steps, but smaller ones may be less able to bear the costs of doing so. He stated that if smaller investors respond to these costs simply by choosing to vote less, the result may be to give more influence to large institutions. He said the proxy advisory industry is dominated by a small
number of players, raising concerns that the guidance may further concentrate voting influence into just a few hands. Lee expressed concern that the guidance and interpretation would expand the role of issuers in the proxy process, stating that issuers have expertise which could be valuable, but they also have a stake in the outcome of votes. He also raised concerns that the guidance could increase barriers to entry into the proxy advisory market.

**Federal Reserve Announces Plan to Move Forward with a Real-Time Payment System**

**Key Points:**
- The Federal Reserve announced it intends to move forward with a 24x7x365 real-time payment and settlement service.
- The Board anticipates the services being available in 2023 or 2024.

On August 5, the Federal Reserve Board voted to develop a 24/7 real-time payment and settlement system called the FedNow Service. The Board issued a [Notice and Request for Comment](#) on new service, which explained:

The Board of Governors of the Federal Reserve System (Board) has determined that the Federal Reserve Banks (Reserve Banks) should develop a new interbank 24x7x365 real-time gross settlement service with integrated clearing functionality to support faster payments in the United States. The new service would support depository institutions’ provision of end-to-end faster payment services and would provide infrastructure to promote ubiquitous, safe, and efficient faster payments in the United States. In addition, the Federal Reserve intends to explore expanded hours for the Fedwire Funds Service and the National Settlement Service, up to 24x7x365, to support a wide range of payment activities, including liquidity management in private-sector real-time gross settlement services for faster payments.

A Federal Reserve [press release](#) explained that the Board was “requesting comment on how the new service might be designed to most effectively support the full set of payment system stakeholders and the functioning of the broader U.S. payment system.” The release noted that the Board anticipates the FedNow Service being available in 2023 or 2024.

The Notice will be subject to a 90 day comment period upon publication in the Federal Register.

**FDIC and OCC Finalize Volcker Rule Volcker Rule Modifications**

**Key Points:**
- The FDIC and the OCC approved a final rule intended to simplify and tailor the Volcker Rule.
- The Federal Reserve, the SEC, and the CFTC have yet to act on the final rule.

On August 20, the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) approved an interagency [final rule](#) intended to simplify and tailor application of the Volcker Rule. The FDIC and OCC issued a proposed rule in July 2018, along with the Federal Reserve Board, the Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC). The Federal Reserve Board, the SEC, and the CFTC have yet to act on the final rule.
An FDIC press release explained that the final rule will:

- Tailor the rule's compliance requirements based on the size of a firm's trading assets and liabilities, with the most stringent requirements applied to banking entities with the most trading activity;
- Retain the short-term intent prong of the "trading account" definition from the 2013 rule only for banking entities that are not, and do not elect to become, subject to the market risk capital rule prong;
- Replace the rebuttable presumption that instruments held for fewer than 60 days are covered under the short-term intent prong with a rebuttable presumption that instruments held for 60 days or longer are not covered;
- Clarify that banking entities that trade within internal risk limits set under the conditions in this final rule are engaged in permissible market making or underwriting activity;
- Streamline the criteria that apply when a banking entity seeks to rely on the hedging exemption from the proprietary trading prohibition;
- Limit the impact of the rule on the foreign activities of foreign banking organizations; and
- Simplify the trading activity information that banking entities are required to provide to the agencies.

The final rule will have an effective date of January 1, 2020, and a compliance date of January 1, 2021.

House Financial Services Committee Chairwoman Maxine Waters (D-CA) issued a press release criticizing the final rule, stating that it will “not only put the U.S. economy at risk of another devastating financial crisis, but it could potentially leave taxpayers at risk of having to once again foot the bill for unnecessary and burdensome bank bailouts.”

Upcoming Hearings and Meetings

September 4
Financial Inclusion: The House Financial Services Committee’s Subcommittee on Oversight and Investigations will convene a field hearing in Houston, Texas entitled “Examining Discrimination and Other Barriers to Consumer Credit, Homeownership, and Financial Inclusion in Texas.”

September 10
Student Lending: The House Financial Services Committee will hold a hearing entitled “A $1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable.”

September 11
Private Market Exemptions: The House Financial Services Committee’s Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets will convene a hearing entitled “Examining Private Market Exemptions as a Barrier to IPOs and Retail Investment.”

Climate Change: The House Financial Services Committee’s Subcommittee on National Security, International Development, and Monetary Policy will convene a hearing entitled, “Examining the Macroeconomic Impacts of a Changing Climate.”

September 12
Artificial Intelligence Task Force: The House Financial Services Committee’s Task Force on Artificial Intelligence will convene a hearing entitled, “The Future of Identity in
Financial Services: Threats, Challenges, and Opportunities.”

**September 18-19**

**Markup:** The House Financial Services Committee will convene for a markup. The agenda for the markup has not been announced.

**September 24**

**SEC Oversight:** The House Financial Services Committee will hold a hearing entitled “Oversight of the Securities and Exchange Commission: Wall Street’s Cop on the Beat.”

**Racial and Gender Wealth Gap:** The House Financial Services Committee’s Subcommittee on Diversity and Inclusion will convene a hearing entitled, “Examining the Racial and Gender Wealth Gap in America.”

**September 25**

**Financial Stability:** The House Financial Services Committee’s Subcommittee on Consumer Protection and Financial Institutions will convene a hearing entitled, “Promoting Financial Stability: Assessing Threats to the U.S. Financial System.”

**Reverse Mortgages:** The House Financial Services Committee’s Subcommittee on Housing, Community Development, and Insurance will convene a hearing entitled, “Protecting Seniors: A Review of the FHA’s Home Equity Conversion Mortgage (HECM) Program.”

**September 26**

**Debt Collection:** The House Financial Services Committee will convene a hearing entitled, “Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices.”

**Real-Time Payments:** The House Financial Services Committee’s Task Force on Financial Technology will convene a hearing entitled, “The Future of Real-Time Payments.”

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

**HEALTH**

**GAO Issues Report on PBMs in Part D**

Key Points:
- The Government Accountability Office issued a report on the use of pharmacy benefit managers by Part D plan sponsors
- The report concluded that the growth of PBM discounts exceeded the increase in total Part D expenditures
- PBMs were found to be primarily compensated through volume-based fees instead of as a percentage of negotiated rebates

On August 13, the Government Accountability Office (GAO) released a report on the use of pharmacy benefit managers (PBMs) by Medicare Part D plan sponsors. The study was conducted in response to requests from the Senate Aging Committee and the House Ways and Means Committee for GAO to examine (1) the extent to which PBMs are used by Part D plan sponsors; (2) trends in price concessions and discounts obtained on Part D drugs by PBMs and plan sponsors; and (3) ways in which PBMs generate revenue for services provided to Part D plans. The report’s findings were based on data from the Centers for Medicare and Medicaid Services (CMS).
The report revealed that plan sponsors used PBMs to manage 74 percent of their Part D benefit in 2016, the most recent year for which data was available. Discounts paid by manufacturers, including rebates, rose faster than Part D gross expenditures from 2014 to 2016. The report also found PBMs were primarily compensated by plan sponsors through volume-based fees on processed claims. PBMs received additional payments from price concessions negotiated with manufacturers, but the percentage of rebates retained as revenue accounted for less than one percent of total discounts. The remaining 99.6 percent of manufacturer concessions were passed on to plans sponsors, which use the cost savings to limit beneficiary premiums.

These findings indicate that PBM-negotiated price concessions are playing a larger role in containing the net costs of the Part D program and that the majority of savings on Part D drugs are passed on to plans rather than captured as PBM revenue. The Trump Administration recently pulled a proposed rule that would have required savings from PBM-negotiated price concessions to be used for point-of-sale discounts to lower out-of-pocket costs. The Department of Health and Human Services released several scores for the proposal, all of which predicted the rule would have increased premiums for Part D enrollees. Analysis in the GAO report ostensibly supports these projections and the low rebate revenue could be used by plans to curtail future efforts to reform the role of PBMs in Part D.

A link to the full report can be found here.

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

Work Continues on U.S.-Japan Trade Agreement

Key Points:
- The Japanese Economy Minister has been meeting with U.S. officials this week and has reported that the discussions are progressing amicably.
- Senator Chuck Grassley says Congressional approval is not needed for an agreement between the two countries.
- U.S. dairy farmers are lobbying to reach a deal with Japan as quickly as possible.

On Wednesday, after two days of meetings with U.S. Trade Representative (USTR) Robert Lighthizer, Japanese Economy Minister Toshimitsu Motegi told reporters that Japan and the U.S. were narrowing gaps in key areas and “gradually” approaching the last stage of talks on a trade deal. When asked for more specifics Motegi said, “[w]e agreed to speed up discussions and work on the remaining issues for early results.” Japan is pushing for a limited agreement on goods, aiming to reduce U.S. tariffs on vehicles and auto parts, while the U.S. is keen to boost agriculture market access.

Senate Finance Committee Chairman Chuck Grassley (R-IA) also believes a deal could be reached soon. He has been arguing this week that a deal between the U.S. and Japan would not necessarily need to be approved by Congress. He said, “I don’t think a Japan agreement is going to take action by the Congress. If it does, I’m prepared to take that action and I would think it would be pretty easy
for the House to do it as well, if it’s necessary. But I’m not sure it’s necessary under TPA.” He added that he expects a deal to be announced in the next few months. The initial deal could be limited to tariff reductions for tariffs of up to 5 percent on the U.S.-side, which the President could do under existing authority.

Meanwhile, U.S. dairy farmers have been encouraging negotiators to strike a deal with Japan quickly now that Japan’s recent elections have concluded. More than 70 dairy industry groups recently sent a letter to USTR Lighthizer and Agriculture Secretary Sonny Perdue urging “the USTR to move quickly to secure an agreement that builds upon the best dairy components of the CPTPP and Japan-EU agreements. Without that, our industry stands to lose $1.3 billion in exports over a decade, costing dairy farmers $1.7 billion in farm income.”

Congressional Budget Office Releases Economic Projections for Trade Impacts on the Economy

Key Point:
- CBO estimates U.S. real GDP will be reduced by 0.3 percent in 2020 because of trade barriers and tariffs.

In the Congressional Budget Office’s (CBO’s) newly published economic projections, it estimates that real U.S. gross domestic product (GDP) will be reduced by 0.3 percent in 2020 because of trade impacts, reducing average real household income by $580 (in 2019 dollars). CBO explains that due to higher trade barriers and increases in tariffs: domestic prices will rise, thereby reducing the purchasing power of domestic consumers, and increasing the cost of business investment. The report adds that the increasing tariffs have increased uncertainty concerning business investments in the U.S. In CBO’s projections, the economic effects of the tariffs wane after 2020, as businesses make adjustments to their supply chains to mitigate the costs associated with the tariffs. The CBO does note however that their projections are uncertain because broad tariff increases in developed economies have been rare in recent history. Also, the estimated short-run effects on trade and prices are uncertain because it is difficult to predict how foreign exporters might adjust their prices in response to the tariffs and associated changes in the value of the dollar.

China Update, List 4 Split into Two Sections

Key Point:
- List 4 has been split into two sections, A and B, and will be effective on September 1, and December 15, respectively.

The USTR confirmed two weeks ago that certain unidentified products were removed from List 4 for health, safety, national security and similar reasons, and those remaining would be rolled out on two different lists with two different effective dates. List 4A will be effective September 1, 2019 and List 4B will be effective on December 15, 2019. The earlier list covers products where less than 75 percent is imported from China, i.e., there are other sources. The second, delayed, list includes products where 75 percent or more of the imports are sourced from China, making alternative sourcing more difficult. The USTR stated in a later announcement that an exclusion process will be provided for goods on Lists 4A and 4B, but nothing was said about beefing up staff and shortening the amount of time the exclusion process is taking to get to
conclusion. Finally, President Trump suggested that he wanted to delay tariffs on certain goods to avoid impacting holiday purchases.

U.S. and Mexico Reach Tomato Truce

Key Point:
- U.S. agrees to suspend antidumping investigations into Mexican tomato growers.

Wednesday, the U.S. Department of Commerce reached a last-minute agreement with Mexican tomato growers to suspend an antidumping investigation into fresh tomatoes from Mexico, raise reference prices and include additional enforcement provisions. Florida Tomato Exchange Executive Vice President Michael Schadler told reporters that, “[t]he Commerce Department should be commended for its hard work to seriously address the concerns of the domestic industry.” Mexican officials have also praised the deal, including: Mexican Economy Minister Graciela Márquez; Mexican trade official Jesús Seade; and Mexican Agriculture Minister Victor Villalobos.

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 Bareham.