This Week In Congress

**House** – The House was in recess.

**Senate** – The Senate confirmed several judicial nominations.

Next Week In Congress

**House** – The House and Senate are expected continue negotiations toward a stopgap funding package, as the current continuing resolution is scheduled to expire on November 21. The House is scheduled to begin public hearings in the impeachment inquiry into President Trump. The House is expected to vote on H.R. 4863, “The United States Export Finance Agency Act,” which would reauthorize the Export-Import Bank for ten years.

**Senate** – The Senate is expected to consider the nominations of Steven Menashi to be a Circuit Court Judge, and Chad Wolf to be Undersecretary for Strategy, Policy, and Plans at the Department of Homeland Security.

TAX

Senator Wyden (D-OR) Introduces the Opportunity Zone Reporting and Reform Act

**Key Points:**

- **Senate Finance Ranking Member Wyden (D-OR)** introduced the Opportunity Zone Reporting and Reform Act to ensure more transparency of the Opportunity Zone program.
- **The legislation would require annual reporting from investors and terminate the Opportunity Zone status from non-impoverished communities.**

On November 6, Senate Finance Committee Ranking Member Wyden (D-OR) introduced the [Opportunity Zone Reporting & Reform Act](#) as a way to ensure transparency measures around the Opportunity Zone program. The proposed legislation would do the following: (1) require annual public reporting by all Qualified Opportunity Funds and annual statements to the IRS from investors; (2) terminate Opportunity Zones that are not low-income or impoverished; (3) clarify the Opportunity investment rules; and (4) require a review by the Government Accountability Office (GAO). Ranking Member Wyden stated, “the legislation would ensure that taxpayers are not subsidizing handouts with no benefit to low-income communities the program was intended to help.”

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Ranking Member Wyden’s introduction of the legislation comes one day before he, along with Senator Booker (D-NJ), Representative Lewis (D-GA) and Representative Neal (D-MA), requested that the Government Accountability Office to further study the Opportunity Zones program implementation by the IRS and the Treasury Department.

**Congressional Democrats Propose a Millionaire’s Surtax on All Income Above $2 Million**

**Key Points:**
- Senator Van Hollen (D-MD) and Representative Beyer (D-VA) introduced the Millionaire Surtax to apply to all forms of income above $2 million.
- The tax is expected to raise $635 billion over 10 years, and is a signal of possible intentions post-2020.

On November 7, Senator Van Hollen (D-MD) and Representative Beyer (D-VA), introduced a new tax proposal entitled the “Millionaires Surtax.” The legislation would apply to taxpayers’ income above $2 million and would apply to all forms of income including wages, salaries, and capital gains. It would impose a 10-percentage point surtax on all income above $2 million for married couples filing jointly and $1 million for single filers. Additionally, it would raise the top tax rate on wages and salaries from 37 percent to 47 percent and raise the top capital gains tax rate from 20 percent to 30 percent.

According to a Tax Policy Center estimate, the tax would raise $635 billion over a ten-year period. Senator Van Hollen said the new legislation is expected to “put in place a simple system to ensure the wealthy are doing their part to invest in strengthening America’s future for everyone.”

The new legislation is positioned by supporters as a simple approach focused on the wealthiest 0.2 of percent taxpayers that applies equally to income from wealth and tax. It is one of many proposals made that could attract attention after the 2020 election, depending on who controls the White House and Congress.

**Tax Extenders Legislation Remain Uncertain**

**Key Points:**
- Senate Republicans and House Democrats remain at a standstill as to the spending tradeoffs to renew a tax extenders bill.
- Senate Republicans are uncertain as to how to the next steps to move the legislation forward.

It remains unclear for Senate Republicans when a tax extenders bill will move forward given the debate with House Democrats as to the spending tradeoffs to approve the legislation. Although Senate Finance Chairman Grassley (R-IA) cited the November 21 expiration of the current stopgap government funding law as a potential action-forcing mechanism, the hurdle has Senate Republicans unsure of the next steps.

However, Chairman Grassley remains optimistic that lawmakers could pass a tax bill this year, given Congress and the Trump Administration’s attempt to move the government funding deadline to mid-December. The outlook for tax extenders and other measures that could travel with it largely depends on whether a spending package that can serve as a legislative vehicle emerges, as opposed to a shorter term continuing resolution.

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Victoria Shoots contributed to this section.
FINANCIAL SERVICES

SEC Proposes Rules on Proxy Process and Adviser Advertisements; Issues Extension of No-Action on Research in MiFID

Key Points:
- The SEC issued a proposed rule regarding the exemptions utilized by proxy advisors.
- The Commission also issued a proposal to increase the resubmission thresholds for shareholder proxy proposals.

On November 5, the Securities and Exchange Commission (SEC) held an open meeting and approved two proposed rules: (1) Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice; and (2) Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8. Both items were approved by 3-2 votes with Commissioner Robert Jackson Jr. and Commissioner Allison Herren Lee voting no. Both items will be subject to 60 day comment periods.

Chairman Jay Clayton explained that the first proposal would: (1) require that proxy advisor conflicts that would be material to an investment decision should be disclosed; (2) provide an opportunity for a brief period of review and feedback through which registrants will be able to identify any factual errors or methodological weaknesses in the proxy voting advice, and proxy voting advice businesses would have an opportunity to amend and supplement their reports to the extent they believed necessary. Clayton emphasized that the shareholder proposal resubmission thresholds are “ripe for modernization,” as they have not been updated in decades. Clayton, in a statement, explained that:

Today’s proposed amendments have been carefully crafted to more appropriately balance the benefits and burdens to all shareholders, while, importantly, retaining the ability of small, medium- and long-term shareholders to continue to enter and engage in the shareholder proposal process. For example, today’s proposal would not impact the ability of long-term shareholders to submit a proposal as the recommendation does not seek to increase the $2,000 dollar submission threshold for shareholders who have held their shares for more than three years. For those shareholders with shorter-term holdings, the proposed amendments would be tiered to appropriately tailor the dollar thresholds.

Clayton also noted that he has directed staff to prepare recommendations related to proxy plumbing and universal proxy cards.

Commissioners Elad Roisman and Hester Peirce spoke in support of both proposals. Roisman, in a statement, said proxy voting is essential to the capital markets. He stressed the need to act on modernization rather than letting longstanding debates linger. He noted that the solicitation rules have not been amended in 27 years, despite transformational changes in the market. He stated that some market participants have argued against changing the proxy rules, with some warning that new regulations could disrupt the proxy process and impose new costs on investors. He stated that any action the SEC takes will inevitably criticized, asserting that the SEC should not shy away from this issue because it is difficult. He asserted that the shareholder proposals process is being abused, stating that the thresholds should require that a shareholder has a meaningful stake in the company. He said the SEC is proposing a tiered approach to the thresholds. He stated that the proposal would
also make changes to the resubmission thresholds, which have not been amended since 1954. Peirce said the two proposals address nuanced and technical areas of the SEC’s regulations. She said the proposals recognize the value of the service provided by proxy advisors, while providing for accountability. She stated that the proposals take into account concerns from issuers about being able to flag factual errors in proxy advisor recommendations.

Commissioners Robert Jackson Jr. and Allison Herren Lee spoke in opposition to both proposals. Jackson stated that the proposed rules would shield executives from accountability. He said the changes to resubmission thresholds would further insulate insiders from accountability. He asserted that short-run voting results should not be the only determinant of a proposal’s merit. He stated that the proposal would remove key corporate accountability measures from ballots. Lee stated that the two proposals would make it harder for shareholders to get their proposals onto ballots. She said these policy choices would shift power away from shareholders and towards management. She stated that data shows that management prevails in more than 90 percent of proxy votes, suggesting that the proposed rules would tilt this balance even further towards management. Lee stated that the proposed change to resubmission thresholds would reduce shareholder rights, particularly for the smallest shareholders. She asserted that shareholder proposals have helped to improve corporate governance for decades. She said shareholder proposals can highlight the need for corporate changes even if they are not adopted. She stated that the proposed changes would build structural advantages for wealthier investors.

Additionally, this week the SEC voted to issues proposed amendments to modernize the rules under the Investment Advisers Act addressing investment adviser advertisements and payments to solicitors. The proposed rule will be subject to a 60 day comment period.

The Commission also issued an extension of an October 2017 no-action letter it provided to assist market participants regarding their U.S.-regulated activities as they engage in efforts to comply with the provisions relating to research in MiFID II.

Senate Banking Committee Holds Hearing on Affordable Housing

Key Point:

- The Committee examined bipartisan bills dealing with carbon monoxide detectors, manufactured housing, and foster care.

On November 7, the Senate Banking Committee held a hearing entitled “Examining Bipartisan Housing Bills to Promote Affordable Housing Access and Safety.” The hearing focused on three bills:

- The CO ALERTS Act (S.2160), introduced by Senator Tim Scott (R-SC), which would require the installation and maintenance of carbon monoxide alarms in most forms of federally-assisted housing, in any dwelling unit containing a fuel-burning appliance, fireplace, furnace, or enclosed garage.

- The HUD Manufactured Housing Modernization Act (S. 1804), introduced by Senator Catherine Cortez-Masto (D-NV), would provide confirmation to State and local jurisdictions who receive HUD funding through programs like the Community Development Block Grant or HOME Investment Partnerships program that manufactured housing is an eligible
affordable housing option for which communities can receive public funding for construction and repair.

- The Fostering Stable Housing Opportunities Act (H.R. 4300), introduced by Representative Madeleine Dean (D-PA), which would authorize HUD to allocate vouchers under its Family Unification Program more directly to any public housing agency that requests an allocation in order to provide timely assistance to an eligible youth who is aging out of foster care and at risk of losing their safety net overnight.

Chairman Mike Crapo (R-ID) spoke in support of all three bills, stating that they are well crafted and have bipartisan support. Ranking Member Sherrod Brown (D-OH) emphasized that the U.S. is currently experiencing an affordable housing crisis. He asserted that the Trump Administration is making the housing situation worse by cutting the HUD budget, dismantling protections, and advocating for housing finance system reform that would make mortgages more expensive and difficult to get.

FSOC Discusses on Cloud Service Providers, Annual Report, CECL

Key Point:
- FSOC met in executive session to discuss its annual report, amendments to guidance on nonbank financial company designations, cloud service providers, and CECL accounting standard.

On November 7, the Financial Stability Oversight Council (FSOC) met in executive session to discuss its 2019 annual report and interpretive guidance on nonbank financial company designations. Staff of the federal banking regulators and Treasury Department also gave a presentation regarding “financial institutions’ use of cloud service providers, banking agencies’ authorities to oversee third-party service providers, and regulators’ current supervisory activities related to cloud service providers.” Staff of federal banking regulators also gave a presentation of the Financial Accounting Standards Board’s new standard, the current expected credit losses methodology (CECL). Stephen Ledbetter was also approved to be the Director of Policy of the FSOC at Treasury, and as Executive Director of FSOC.

Upcoming Hearings and Meetings

November 12

Small Business Capital Formation Advisory Committee: The SEC will hold a meeting of its Small Business Capital Formation Advisory Committee. The agenda for the meeting includes panels on: (1) Harmonization: Exempt Offering Framework; and (2) Harmonization: Pooled Investment Funds.

November 13

Multilateral Development Banks: The House Financial Services Committee’s Subcommittee on National Security, International Development, and Monetary Policy will hold a hearing entitled “How America Leads Abroad: An Examination of Multilateral Development Institutions.”

Federal Reserve: The Joint Economic Committee will hold a hearing on “The Economic Outlook.” Federal Reserve Chairman Jerome Powell is scheduled to testify at the hearing.

Financial Well-Being: The Consumer Financial Protection Bureau will hold a conference to discuss the latest research on
financial well-being using the Bureau’s Financial Well-being Scale.

**November 13-14**

**Markup:** The House Financial Services Committee will hold a markup of pending legislation. The agenda for the markup has not been announced.

**Federal Reserve:** The House Budget Committee will hold a hearing entitled “The Economic Outlook: The View from the Federal Reserve.” Federal Reserve Chairman Jerome Powell is scheduled to testify at the hearing.

**November 14**

**FEMA:** The Senate Homeland Security and Governmental Affairs Committee will hold a hearing on the nomination of Peter Gaynor to be Administrator of the Federal Emergency Management Agency (FEMA).

**November 19**

**Private Funds:** The House Financial Services Committee will hold a hearing entitled “America for Sale? An Examination of the Practices of Private Funds.”

**November 20**

**Nominations:** The Senate Banking Committee will hold a hearing on the following nominations: Mitchell Silk, to be an Assistant Secretary of the Treasury; The Honorable Brian Montgomery, to be Deputy Secretary of Housing and Urban Development (HUD); David Woll, Jr., to be an Assistant Secretary of HUD; and Peter Coniglio, to be Inspector General, Export-Import Bank.

**Minority Financial Institutions:** The House Financial Services Committee’s Subcommittee on Consumer Protection and Financial Institutions will convene for a hearing entitled “An Examination of Regulators’ Efforts to Preserve and Promote Minority Depository Institutions.”

**Housing Safety:** The House Financial Services Committee’s Subcommittee on Housing, Community Development, and Insurance will convene for a hearing entitled “Safe and Decent? Examining the Current State of Residents’ Health and Safety in HUD Housing.”

**November 21**

**Big Data:** The House Financial Services Committee’s Task Force on Financial Technology will convene for a hearing entitled “Banking on Your Data: the Role of Big Data in Financial Services.”

**December 18**

**SEC Open Meeting:** The SEC will hold an open meeting to consider whether to approve the 2020 budget of the Public Company Accounting Oversight Board (PCAOB) and the related annual accounting support fee for the Board under Section 109 of the Sarbanes-Oxley Act of 2002.

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

HHS Files Patent Infringement Lawsuit

Key Point:
- The U.S. has filed a patent infringement suit against Gilead Sciences seeking damages for infringement of government patents.

On November 6, the Department of Health and Human Services (HHS) announced the U.S. government filed a patent infringement complaint against Gilead alleging infringement of patents related to pre-exposure prophylaxis (PrEP) for HIV prevention. The complaint also alleges that as a result of this infringement, Gilead has profited from research funded by hundreds of millions of taxpayer dollars.

Gilead had originally obtained Food and Drug Administration (FDA) approval for Truvada and Descovy for post-infection HIV treatment. After the Centers for Disease Control and Prevention (CDC) research in PrEP and human trial, Gilead obtained additional FDA approvals for the products to be used as PrEP regimens. Gilead markets the regimens that HHS patented and has refused to obtain licenses for use of those patents. Two other companies manufacture generic equivalents of Truvada for PrEP in foreign countries and have agreed to licenses with HHS.

HHS Secretary Alex Azar said “Gilead must respect the U.S. patent system, the groundbreaking work by CDC researchers, and the substantial taxpayer contributions to the development of these drugs.”

Gilead has not yet filed a response to the complaint.

Upcoming Hearings and Meetings

November 13

Policy: Axios will host a discussion on “Health Care in 2020.”

Kidney Care: Politico will host a discussion on “Fixing Kidney Care.”

Workforce: The House Small Business Committee will hold a hearing on “Upskilling the Medical Workforce: Opportunities in Health Innovation.”

November 14

E-Cigarettes: The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “Examining the Response to Lung Illnesses and Rising Youth Electronic Cigarette Use.”

Reproductive Health: The House Oversight and Reform Committee will hold a hearing on “Examining State Efforts to Undermine Access to Reproductive Health Care.”

November 20

FDA: The Senate Health Education, Labor and Pensions Committee will hold a hearing on the “Nomination of Stephen M. Hahn, MD, to serve as Commissioner of Food and Drugs.”

For more information about healthcare issues you may email or call Nicole Ruzinski Bertsch or George Olsen at 202-659-8201.
TRADE

Update on U.S.-China Phase One Deal

Key Points:

- Reports suggest China and the U.S. have considered plans to reduce tariffs as part of a Phase One trade agreement; President Trump suggested he has yet to agree, however.
- There are still many difficult issues to work out between the two countries, and reducing tariffs is not a certainty.

The U.S. has agreed to eliminate some of the tariffs it has placed on roughly $360 billion worth of Chinese goods as part of a Phase One deal with China, a Ministry of Commerce spokesman said on Thursday. Chinese Ministry spokesman Gao Feng said early Thursday that both sides had agreed to simultaneously cancel some tariffs on each other’s goods, and were closer to a so-called “phase one” trade agreement, according to China’s state broadcaster. Gao stressed that one important condition for a limited trade agreement was that the U.S. and China must remove the same amount of charges at the same time, according to the report. Gao said the tariffs that will be eliminated in a phase-one deal will depend on what else is included in the pact, indicating that the two sides had not yet finalized the specifics. “The trade war starts with the addition of tariffs and should also be terminated by the elimination of tariffs,” he said. “As for the number of cancellations in the first phase, it can be agreed according to the content of the first-phase agreement.”

President Trump said Friday that he has not agreed to roll back all existing tariffs on China, but that Beijing would like him to do so. When asked about a complete rollback of tariffs he has imposed on almost $400 billion in Chinese goods he told reporters, “I won’t do it.”

U.S. officials last month said a Phase One deal would include Chinese purchases of U.S. agricultural products and address structural agricultural issues, intellectual property rights, financial services market liberalization and forced technology transfers, though details were scarce. More structural reforms were left for future talks; President Trump has said a second and third phase will follow. President Trump and Chinese President Xi Jinping were expected to sign the phase-one deal at the APEC leaders summit in mid-November, but the host country, Chile, canceled that meeting due to domestic protests. The U.S. and China have not yet agreed to a new location to sign a deal.

Update on the USMCA

Key Points:

- Ways and Means Chairman Neal (D-MA) went to Canada to speak with Prime Minister Trudeau about the USMCA, claiming progress was made and a deal was close.
- Twelve labor unions warned Congress that they will oppose the USMCA as it is currently written.

On Wednesday, a bipartisan group of House lawmakers, led by Ways and Means Committee Chairman Neal, met with Canadian Prime Minister Justin Trudeau. Reports indicate they said that significant progress is being made in negotiations with the Trump administration on the U.S.-Mexico-Canada Agreement (USMCA). Chairman Neal reported the group discussed the status of the pact, including outstanding issues on labor enforcement, with Trudeau and Foreign Minister Chrystia Freeland. Both Mexico and Canada will have to approve any changes made to the USMCA before Congress ratifies it. Chairman Neal told reporters Wednesday before the meeting, “We think on USMCA we’re very close, but we need some guarantees as it relates not just in Canada, but
also their help with labor enforcement as it relates to Mexico.”

In regards to Mexico, twelve large labor groups have expressed doubts that the USMCA as written includes sufficient enforceable protections for workers. This week, they wrote a letter to House lawmakers warning them that they will not support the current version of the bill if it is put up for a vote. The letter states, “[t]he House should not bring NAFTA 2.0 to the floor before it is significantly improved and reflects our core recommendations. If an agreement that falls short in these critical areas is considered, the unions of the Industrial Union Council (IUC) will unfortunately have no choice except to oppose its adoption.” The demands include: (1) detailed improvements on labor that the IUC has previously sent to USTR; (2) a "structurally sound" enforcement mechanism; and (3) for Mexico to provide adequate resources to administer a “comprehensive program of labor inspections.”

White House Trade Advisor Peter Navarro on Wednesday said the chances of getting the USMCA passed this year were “dwindling” due in large part to the ongoing impeachment inquiry initiated by House Democrats. Mr. Navarro expressed doubts that Democrat leaders want to get the deal done.

Expectations on the Hill are that in the next week or two Speaker Pelosi will announce a decision on whether or not the House will move forward this year with a vote on the USMCA.

**EU 232 Auto Deadline Next Week**

**Key Points:**

- The six-month deadline for auto Section 232 action comes up next week, on November 13.
- Positive comments this week suggest perhaps the deadline will be put off again or ignored.

In May, President Trump gave a six month pause on an auto Section 232 investigation and ordered the USTR to pursue negotiations with the EU, Japan “and any other country the Trade Representative deems appropriate” to address the national security threat auto and auto parts imports pose to the U.S. Section 232 of the Trade Expansion Act of 1962 says the President can choose to enter into negotiations with other countries to address imports that cause a threat to national security. But if after 180 days of talks a deal is not struck or an agreement is deemed ineffective, the President can restrict imports of the product causing the national security threat.

The Commerce Department submitted its findings on the national security implications on auto and auto parts imports to the White House in February. Its investigation found that auto imports posed a national security threat. President Trump in May said he would delay a decision on whether to impose restrictions on auto and parts imports, giving the Office of the U.S. Trade representative six months to negotiate arrangements with Japan and the European Union. That window ends next week. Many EU automakers have been pushing a message that they have been investing more in the U.S., and plan to do more in the future.

Recent positive comments by Commerce Secretary Ross suggest enough progress may have been made that Section 232 would not be invoked. Most progress appears to be informal discussions (rather than formal U.S.-E.U.-negotiations) with EU automakers who have
made their case to the Trump Administration that they have and will continue to invest heavily in U.S. auto production.

For more information about tax 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.