This Week In Congress


Senate – The Senate confirmed the nominations of Stephen Hahn to be Commissioner of the Food and Drug Administration, and John Sullivan to be ambassador to Russia.

Next Week In Congress

House – The House is expected to vote on articles of impeachment against President Trump. The House may vote on passage of the United States-Mexico-Canada Agreement (USMCA) and H.R. 5377, “The Restoring Tax Fairness for States and Localities Act.” The House is scheduled to vote Tuesday on a bill to fund the government through the end of Fiscal Year (FY) 2020.

Senate – The Senate is expected to take up the FY 2020 funding bill after it is passed by the House. The Senate is also expected to vote on the conference agreement to S. 1790, “The National Defense Authorization Act.” As is common at the end of the year, additional measures are likely to pass through both chambers by unanimous consent.

TAX

Year-End Tax Package Deal Still Uncertain

Key Points:

- Congress has reached an agreement in principle on government funding, but no agreement has been reached on whether tax provisions will be included.
- House Ways and Means Committee Chair Neal (D-MA) acknowledged that a “slimmed down” year-end tax bill was being considered but did not offer any further details.
- There is speculation that the year-end package will not include any of the expired or expiring tax provisions.

While the House and Senate have reached an agreement in principle to fund the government through the end of Fiscal Year (FY) 2020, they have not yet reached an agreement on tax provisions. Negotiations are expected to continue Friday and possibly into the weekend, as a decision on the tax provisions is needed in the next 24-48 hours. It remains unclear whether there will be a narrow deal, a broad deal, or no deal at all. There should be clarity.
on the matter by early next week when the legislative vehicle for the FY 2020 funding package begins to move.

On December 11, House Ways and Means Committee Chairman Neal (D-MA) signaled that a “slimmed-down” year-end tax bill was being discussed. Although it is unclear as to what is included in the package, there is speculation that it may not include any of the expired or expiring tax extenders, but instead consist of the retirement legislation and disaster relief measures. While some Democrats are still pushing to expand refundable tax credits as part of an agreement, Republicans are resistant that being added to the deal. On Wednesday, Senate Majority Whip John Thune (R-SD) said that his Republican colleagues preferred a smaller package that would restore and/or extend temporary tax breaks.

Ways and Means Committee Approves Bill to Restore the SALT Deduction

Key Points:

- The House Ways and Means Committee approved legislation to reverse the cap on the SALT deduction imposed by the Tax Cuts and Jobs Act.
- Democrats argued that the legislation would benefit lower- and middle-class households, while Republicans criticized it as a tax cut for the wealthy.
- The House is expected to vote on passage of the bill next week. The bill is unlikely to be taken up by the Senate.

On December 11, the House Ways and Means Committee held a markup of the Restoring Tax Fairness for States and Localities Act (H.R. 5377) by a vote of 24-17. The legislation is intended to provide temporary relief from the cap on the state and local tax (SALT) deduction imposed by the Tax Cuts and Jobs Act (TCJA).

Specifically, the bill would:

- Double in the 2019 tax year the deduction from $10,000 to $20,000 for married couples, eliminating the SALT marriage penalty this year.
- In 2020 and 2021, temporarily eliminate the SALT deduction limitation entirely.
- Increase the top tax rates for individuals from the current 37% to 39.6% and restore the top tax bracket (at a lower income threshold, $469,050 instead of current $622,050) for the tax years 2020-2025 (five years) as an offset.

The bill is fully offset over ten years, raising $6.2 billion over that period.

House Ways and Means Chairman Neal (D-MA) said the bill is an important step towards reversing the cap on the SALT deduction. Ranking Member Brady (R-TX) expressed opposition of the bill, stating that capping the SALT reductions led to higher income tax revenue in several states. He contended that under this bill, low tax states would subsidize high tax states.

The House is scheduled to vote on passage of H.R. 5377 next week. H.R. 5377 is unlikely to see action in the Senate in 2020, based on current expectations. Senate Finance Chairman Grassley (R-IA) has expressed strong opposition to lifting the SALT caps.

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

Senate Banking Committee Holds SEC Oversight Hearing

Key Points:
- Committee members raised numerous issues, including the amount of data collected by the Consolidated Audit Trail (CAT), the SEC's recent proposed rules regarding the proxy process.

On December 10, the Senate Banking Committee held a hearing on oversight of the Securities and Exchange Commission (SEC). The Committee received testimony from SEC Chairman Jay Clayton.

Chairman Mike Crapo (R-ID), in a statement, commended Clayton for the SEC’s work over the past year, including on Regulation Best Interest (BI), the proposal on the accelerated filer definition, and the concept release on harmonization of private securities offering exemptions. He urged the SEC to: (1) revise Regulation D to allow for general solicitation and advertising by sponsors; (2) expand crowdfunding opportunities for small businesses; (3) expand the accredited investor definition to account for qualifying expertise; and (4) update the definition of a family office. Crapo said the Committee has held a number of hearings on the proxy process, commending the SEC for its recent actions. He noted that in November, the SEC proposed two amendments to improve the accuracy and transparency of proxy advice, and to modernize the shareholder proposal process. He urged the SEC to move expeditiously on these efforts. Crapo asserted that he still has concerns with the personally identifiable information (PII) collected by the Consolidated Audit Trail (CAT) and how it will be protected. He noted that the CAT Plan participants recently submitted a request to reduce the amount of PII collected and stored by the CAT, and he urged Clayton to approve this request to use alternative data. Crapo expressed interest in how the SEC is engaging on initial coin offerings (ICOs) and cryptocurrencies. Senators Kevin Cramer (R-ND) and Mike Rounds (R-SD) joined Crapo in raising concerns about the security of the CAT.

Ranking Member Sherrod Brown (D-OH) said the Trump Administration has dismantled many of the protections put in place following the 2008 financial crisis. He stated that the Administration has repeatedly sided with Wall Street over Main Street, including through SEC Regulation BI. He said Regulation BI would only require firms to disclose rather that address conflicts of interest. He asserted that there should have been a uniform fiduciary duty for broker-dealers and investment advisers. Brown spoke in opposition to the SEC’s proposals on proxy advisory firms. He stated that the proposed rules would give companies a new tool to intimidate proxy advisors and threaten their independence. He stated that the existing rules have helped to allow investors to hold managers accountable. He entered into the record a letter from the Ohio Public Employees Retirements System raising concern with the proxy advisor proposal. Senators Jack Reed (D-RI), Tina Smith (D-MN), and Chris Van Hollen (D-MD) also expressed concern with the SEC’s proposals regarding the proxy process.

The Committee also held an executive session and approved the following nominations:
- Mr. Mitchell A. Silk, to be an Assistant Secretary of the Treasury, by voice vote;
- The Honorable Brian D. Montgomery, to be Deputy Secretary of Housing and Urban Development, by a vote of 20-5;
Mr. David C. Woll, Jr., to be an Assistant Secretary of Housing and Urban Development, by a vote of 16-9;  
Mr. John Bobbitt, to be an Assistant Secretary of Housing and Urban Development, by voice vote; and  
Mr. Peter J. Coniglio, to be Inspector General, Export-Import Bank, by voice vote.

House Financial Services Committee Approves Eight Bills

Key Points:
- The Committee approved a bill to direct the SEC to require issuers to disclose whether they have a cybersecurity expert on their board of directors.
- They also approved bills regarding minority financial institutions, student loans, medical debt, and credit scores.

On December 10, the House Financial Services Committee held a markup and approved eight financial services bills:

- The Cybersecurity Disclosure Act of 2019 (H.R. 1731), introduced by Representative Jim Himes (D-CT), which direct the Securities and Exchange Commission to issue final rules requiring a registered issuer to disclose in its mandatory annual report or annual proxy statement whether any member of its governing body has expertise or experience in cybersecurity; and if no member has such expertise or experience, describe what other company cybersecurity aspects were taken into account by the persons responsible for identifying and evaluating nominees for the governing body. The Committee favorably reported H.R. 1731, as amended, by a vote of 32-24.

- The Ensuring Diversity in Community Banking Act of 2019 (H.R. 5322), offered by Representative Gregory Meeks (D-NY), which would establish or modify requirements relating to minority depository institutions, community development financial institutions, and impact banks. The Committee favorably reported H.R. 5322, as amended, by a vote of 52-0.

- The Expanding Opportunities for Minority Depository Institutions (MDIs) Act (H.R. 5315), offered by Representative Joyce Beatty (D-OH), which would amend the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 to establish a Financial Agent Mentor-Protégé Program within the Department of the Treasury. The Committee favorably reported H.R. 5315, as amended, by a vote of 57-0.

- The Private Loan Disability Discharge Act of 2019 (H.R. 4545), introduced by Representative Madeleine Dean (D-PA), which would provide for the discharge of a private education loan in the case of death or total and permanent disability of a student obligor. The Committee favorably reported H.R. 4545, as amended, by a vote of 32-25.

- The Student Borrowers Protections Act (H.R. 5294), introduced by Representative Alma Adams (D-NC) which amends the Truth in Lending Act to establish a postsecondary education loan borrower bill of rights and to require certain creditors to obtain private loan certifications from institutions of higher education; and amends the Fair Credit Reporting Act to require the Bureau of Consumer Financial Protection to issue rules to establish standards for reporting
information related to student loans to consumer reporting agencies. The Committee favorably reported H.R. 5294, as amended, by a vote of 32-26.

- The Fair Student Loan Debt Collection Practices Act (H.R. 5287), introduced by Representative Al Lawson Jr. (D-FL), which would amend the Fair Debt Collection Practices Act to prohibit debt collectors from collecting on certain Federal student loan debt when the borrower would not be required to make payments under an income-driven repayment plan. The Committee favorably reported H.R. 5287, as amended, by a vote of 32-24.

- The Consumer Protections for Medical Debt Collections Act (H.R. 5330), offered by Representative Rashida Tlaib (D-MI), which would amend the Fair Debt Collection Practices Act to provide a timetable for verification of medical debt and to increase the efficiency of credit markets with more perfect information, to prohibit consumer reporting agencies from issuing consumer reports containing information about debts related to medically necessary procedure. The Committee favorably reported H.R. 5330, as amended, by a vote of 31-24.

- The Protecting Your Credit Score Act of 2019 (H.R. 5332), introduced by Representative Josh Gottheimer (D-NJ), which would amend the Fair Credit Reporting Act to ensure that consumer reporting agencies are providing fair and accurate information reporting in consumer reports. The Committee favorably reported H.R. 5332, as amended, by a vote of 31-24.

CFTC Chairman Tarbert Speaks on LIBOR Transition

Key Points:

- CFTC Chairman Heath Tarbert urged market participants to prepare for the cessation of LIBOR at the end of 2021. He stressed the need to avoid a “zombie LIBOR,” which continues to be published but is not a representative benchmark.
- Tarbert announced that the CFTC would be providing no-action relief to allow for a smooth transition from LIBOR to SOFR.

On December 11, the Commodity Futures Trading Commission (CFTC) convened a meeting of its Market Risk Advisory Committee (MRAC). The Advisory Committee received updates from its Subcommittees on Climate-Related Market Risk, Market Structure, Central Counterparty (CCP) Risk and Governance, and Interest Rate Benchmark Reform. The meeting also included panels on: (1) Legacy LIBOR Swaps and Initial Margin Findings; (2) International Swaps and Derivatives Association (ISDA) Developments; and (3) Follow-Up Discussion on Central Counterparty Adjustments to Discounting/Price Alignment Interest Environment.

CFTC Chairman Heath Tarbert commended Commissioner Rostin Benham’s work on the transition from the London Interbank Offered Rate (LIBOR) to the Secured Overnight Financing Rate (SOFR). He emphasized that LIBOR is going away after 2021. He warned market participants that failing to prepare for the transition would create risk for their firms and for the market. He said the Alternative Reference Rates Committee (ARRC) has requested relief from a number of regulators, including on swaps regulation. He announced that the CFTC would be issuing no-action relief next week to address the concerns of the
ARRC. Tarbert stressed the need to avoid a “zombie LIBOR” in which LIBOR continues to be published but is not a representative benchmark.

**OFR Issues 2019 Annual Report**

**Key Point:**
- The OFR’s annual report found that the overall risk to U.S. financial stability is moderate. The report found that solvency and leverage risk are low, credit risk is moderate, and market risk may appear elevated due to high asset prices.

On December 11, the Office of Financial Research (OFR) released its 2019 Annual Report to Congress. The report found that “risks to the financial stability of the United States remain in the medium range.”

The report further explains that:

Across different dimensions of the financial system, we find a mix of low, medium, and high risks. Solvency and leverage risk continues to be low, as financial institution capital is higher than before the 2007-09 financial crisis and earnings are healthy. Most other types of risk to stability are moderate. Of those moderate risks, macroeconomic risk is higher than a year ago. Credit risk is still moderate. Market risk can appear elevated. Asset prices have appreciated with the strong U.S. economy. High asset prices can be a plus, but as past financial crises have shown, elevated prices can also be vulnerable to declines.

The report also detailed the OFR’s data collection and monitoring efforts in regards to the repo market:

The Office passed a significant milestone with the issuance of a final rule to collect data on transactions in the $4 trillion market for repurchase agreements, or repos, which provides funding to securities dealers and others. The vulnerability of repos to runs and fire sales poses potential threats to financial stability. The repo collection will also support an alternative to the London Interbank Offered Rate, or LIBOR. LIBOR has been a widely used interest rate benchmark in global financial markets, but doubts about LIBOR’s integrity have led to efforts to devise an alternative. The repo collection began in October 2019.

**FDIC, OCC Issue Proposed Rule on Community Reinvestment Act Modernization**

**Key Points:**
- The FDIC and the OCC issued proposed rules to modernize the CRA.
- House and Senate Democrats released a letter raising concerns with CRA reform.

On December 12, the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) issued proposed rules to modernize and reform the Community Reinvestment Act (CRA). An FDIC press release explained:

The proposed rules are intended to increase bank activity in low- and moderate-income communities where there is significant need for credit, more responsible lending, greater access to banking services, and improvements to critical infrastructure. The proposals will clarify what qualifies for credit under the CRA, enabling banks and their partners to better implement
reinvestment and other activities that can benefit communities. The agencies will also create an additional definition of “assessment areas” tied to where deposits are located—ensuring that banks provide loans and other services to low- and moderate-income persons in those areas.

The proposed rules will be subject to a 60 day comment period.

The Federal Reserve Board shares authority over the CRA, but did not join the FDIC and OCC in issuing a proposed rule. Federal Reserve Chairman Jerome Powell has indicated that he supports modernization of the CRA, but that he has concerns with how the proposed rule would measure bank compliance with the law. He stated that he still hopes to work towards an agreement with the other regulators, in order to avoid regulatory confusion.

Democrats on the Senate Banking and House Financial Services Committees sent a letter to Federal Reserve, the FDIC, and the OCC raising concerns with the CRA reform proposal. The letter stressed that the CRA “is a critical tool to combat redlining, a practice that still exists by which banks discriminate against prospective customers based primarily on where they live, or their racial or ethnic background, rather than creditworthiness.”

Additionally, House Financial Services Committee Chairwoman Maxine Waters (D - CA) and a group of Democrats attended the FDIC board meeting to express their concerns with the proposed rules.

Upcoming Hearings and Meetings

December 18

**SEC Open Meeting:** The SEC will hold an open meeting to consider the following matters: (1) “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”; (2) “whether to adopt rules under Section 15F(i)(2) of the Securities Exchange Act of 1934 that would require security-based swap dealers and major security-based swap participants to comply with certain risk mitigation techniques with respect to portfolios of uncleared security-based swaps;” (3) “whether to adopt certain rule amendments and guidance regarding the cross-border application of certain security-based swap requirements under the Securities Exchange Act of 1934 that were added by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act;” (4) “whether to adopt an order designating certain jurisdictions as “listed jurisdictions” for purposes of one of the rule amendments noted above;” (5) “whether to propose Rule 13q-1 and an amendment to Form SD under the Securities Exchange Act of 1934 to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to disclosure of payments by resource extraction issuers;” and (6) “whether to propose amendments to the definition of “accredited investor” in the Commission's rules that are intended to update and improve the definition in order to identify more effectively investors that do not need the protections of registration under the Securities Act of 1933.”

**CFTC Open Meeting:** The Commodity Futures Trading Commission (CFTC) will hold an open meeting to consider four items: (1)
Final Rule: Amendments to Derivatives Clearing Organization General Provisions and Core Principles; (2) Proposed Rule: Prohibition on Post-Trade Name Give-Up on Swap Execution Facilities; (3) Proposed Rule: Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants; and (4) Request for Comment on Designated Foreign Sovereign Debt as Collateral and Acceptable Currencies for Collateral and Settlement.

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

HEALTH

House Passes H.R. 3, Likely No Action in the Senate

Key Points:
- The House passed the “Elijah Cummings Lower Drug Costs Now Act” (H.R. 3) by a vote of 230-192.
- The Congressional Budget Office estimates the bill will reduce the federal deficits by $5 billion over the 10-year window.

On December 12, the House passed the “Elijah Cummings Lower Drug Costs Now Act” (H.R. 3) by a vote of 230-192. Representatives Brian Fitzpatrick (R-PA) and Jaime Herrera Beutler (R-WA) were the only Republicans to vote for the bill. Final passage was possible after Majority Leader Nancy Pelosi (D-CA) reached an agreement with the Congressional Progressive Caucus to make certain changes to the final bill. Those changes include increasing the minimum drug subject to negotiation from 25 to 50 and extending protections against price spikes to employer-sponsored health plans.

The Congressional Budget Office (CBO) released its score of the bill in advance of the vote. CBO found over the 10-year window the net effect of the bill would be a savings of $5 billion. The largest impacts would come from the provisions on price negotiation which would save the government $456 billion while the provisions adding services to the Medicare program would raise spending by $358 billion. CBO also estimated approximately eight fewer new drugs would come to market over 2020 to 2029 and about 30 fewer drugs over the subsequent decade. Read the full report here.

The bill now heads to the Senate where it is unlikely to receive consideration. The White House has also indicated the President would veto the bill if it were to reach his desk.

Upcoming Hearings and Meetings

December 17

Opioids: The Senate Judiciary Committee will hold a hearing on “Tackling the Opioid Crisis: A Whole-of-Government Approach.”

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

USMCA Agreement Reached with House Democrats, Vote in House Next Week

Key Points:
- House Speaker Pelosi (D-CA) announced Tuesday that an agreement on the USMCA had been reached and a vote on an implementing bill could come as soon as next week.
- The modified agreement was signed by the three countries’ representatives the same day.
- Senate Majority Leader McConnell (R-KY) said that the deal likely will be voted on after the Senate concludes its impeachment trial of President Trump.

On Tuesday, the same day that House Democrats unveiled articles of impeachment against President Trump, Speaker Pelosi (D-CA) and House Ways and Means Chairman Neal (D-MA) announced new tweaks to the U.S.-Mexico-Canada Agreement (USMCA) and said a vote on an implementing bill could come as soon as next week. Speaker Pelosi released a fact sheet highlighting parts of the USMCA that were changed due to negotiations between the House Democrat USMCA working group and U.S. Trade Representative (USTR) Lighthizer. She noted several changes including: (1) changes to enforcement, by preventing panel blocking; (2) more protections for American workers; (3) enhanced environmental protections; and (4) sweeping changes to the prescription drug provisions, eliminating market exclusivity for biologics, patent evergreening, and a three year exclusivity requirement.

Concerning the timing of the deal, Chairman Neal said he was hopeful the deal could be brought to the floor quickly, adding there was “no reason for unnecessary delays.” Some Democratic House members issued statements on Tuesday saying they still had to review the deal before deciding how to vote on it, but House and Senate passage is expected.

Procedurally, once the USMCA is formally introduced in the House it can no longer be amended. Senate Majority Leader McConnell (R-KY) said on Tuesday that he does not believe the Senate will vote on the USMCA before the end of the year. Majority Leader McConnell said the deal was “not as good as I’d hoped” but added that “we’ll have to take a look at the whole package.” Senator John Thune (R-SD) said the deal would be fast-tracked under Trade Promotion Authority (TPA) once the implementing legislation is submitted to the House, which he said would “hopefully” happen by the end of the week, and noted statutory deadlines for consideration in both chambers. “It’s going to be entirely up to our members and the amount of time they think they need to review it,” Senator Thune said. Potentially delaying Senate action would be an impeachment trial in the Senate, which must occur before any other legislative priority. Based on comments by Leader McConnell, action on USMCA in the Senate seems likely to wait until after the Senate considers any impeachment articles the House sends to the Senate, possibly in January or February.

China Phase One Deal Announced

Key Points:
- The Trump Administration announced that it has reached an agreement on “phase one” of a deal with China that will cut tariffs.
- In exchange for cutting tariffs China has promised to significantly increase its purchases of U.S. agricultural goods, open its financial services sector and enact new intellectual property protections.
President Trump announced that he has signed what he is calling “phase one” of a deal with China. The deal could be signed as early as the first week of January, by USTR Lighthizer and his Chinese counterpart, and would come into force 30 days after signing. The language of the phase one deal has been completely written and no more drafting will occur. The deal is being authenticated in China and will be made public at some point in the future.

According to a press release from the USTR, in the partial deal the U.S. has agreed to modify its Section 301 tariff actions in a significant way in exchange for a promise from Beijing to purchase more U.S. goods and services. The U.S. has placed 25 percent tariffs on $250 billion worth of goods and those will remain, but the 15 percent tariffs on about $112 billion worth of goods will be cut in half to 7.5 percent. President Trump has also pledged to hit another $160 billion worth of Chinese goods with 15 percent tariffs on Dec. 15, but those tariffs would reportedly be suspended as part of the deal. However, sources have indicated that there are snap-back provisions included in the deal so that tariffs could be put back on at any time. Three people briefed on the talks said President Trump was partially swayed to close a deal by a Chinese offer to purchase $200 billion worth of U.S. goods and services over a period of two years. That includes a previous demand to boost imports of U.S. farm goods to between $40 billion and $50 billion within the same period. China would also agree to buy more U.S. energy and manufactured products as well as services.

On top of new Chinese purchases, Beijing has agreed to expand access to its financial services market and include language on currency and intellectual property in the deal, although some inside sources have called the language “meaningless” and “minor”.

The agreement does include some provisions on technology transfer, including general obligations to end forced technology transfers as a condition for market access or approvals, and increase transparency and process improvements. However, more detailed obligations will not be adopted until a phase two agreement is reached.

A new dispute resolution mechanism would be created under the agreement, including what is described as a “hotline” with rapid bilateral consultations. If a dispute is not resolved at that initial level it then escalates to the Deputy level, and if not resolved at the Deputy level it escalates to the Principal level. If the dispute is not resolved at Principal level, the complaining side can take action to retaliate, but retaliation must be proportionate. There is no specific formula for determining what is proportionate, as each country will be allowed to determine what it considers proportionate.

A phase-one deal will not address the major structural issues the Office of the USTR identified in its Section 301 report on Chinese practices, which is the legal basis for President Trump’s tariffs on Chinese goods, the sources said. Those issues include Chinese industrial subsidies, forced technology transfers and intellectual property theft, as well as digital and cyber issues. Some U.S. legislators like Senator Marco Rubio (R-FL) and Senate Majority Leader Chuck Schumer (D-NY) have argued that a small partial deal sacrifices the U.S.’s leverage and will make it more difficult in the long term to obtain a comprehensive deal.

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.