This Week In Congress

**House** – The House approved articles of impeachment against President Trump. The House also passed [H.R. 5430](#), the implementing bill for the United States-Mexico-Canada Agreement (USMCA), [H.R. 5377](#), “The Restoring Tax Fairness for States and Localities Act,” and pair of bills to fund the government through the end of Fiscal Year (FY) 2020, which also repealed several ACA healthcare taxes and included pension provisions (SECURE Act) and tax extenders.

**Senate** – The Senate passed the FY 2020 funding bills after they were approved by the House. The Senate also passed the conference agreement to [S. 1790](#), “The National Defense Authorization Act,” and [S. 151](#), “The Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act,” sending those pieces of legislation to the President who is expected to sign them. The Senate confirmed several judicial, ambassadorial, and federal agency nominations.

Next Week In Congress

**House** – The House will be in recess, scheduled to return on January 7, 2020.

**Senate** – The Senate will be in recess, scheduled to convene the second session of the 116th Congress on January 3, with votes not scheduled until January 6. The Senate is expected to begin the trial in the impeachment of President Trump when it returns from recess in January. Limited legislative activity is likely to occur during the trial, as measures can only be passed by unanimous consent.

TAX

House and Senate Pass $1.4 Trillion Federal Spending Package, Which Includes Tax Extenders, Pension Provisions, and Repeal of ACA Health Care Taxes

**Key Points**

- The House and Senate passed two appropriations bills, which included a tax extenders deal.
- The spending bills also include financing for retired coal miners pension funds and the SECURE Act, which makes several retirement reforms.
- The bill also repeals three taxes Affordable Care Act taxes, costing $373 billion over a decade.

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This week, the House and Senate passed a pair of spending bills that included a tax extenders package. Senate Finance Chairman Charles Grassley (R-IA) described the agreement on extenders as a “reasonable way forward that provides certainty where before there was only anxiety for many Americans.” Included in the tax extenders package are extensions of many provisions from 2018 through the end of 2020, and the extension of several provisions expiring at the end of 2019 through 2020, including the wind PTC and the CFC look-thru. Finally, there were some anomalies like an extension for biodiesel through 2022.

Additionally, the spending bill included financing for the healthcare and pension benefits of retired union coal miners threatened by the insolvency of their pension fund, and the Setting Every Community Up for Retirement Enhancement (SECURE Act). The SECURE Act will make changes to a number of retirement provisions, including removing the age limit restrictions on IRA contributions, raising the age at which people must begin making mandatory withdrawals from individual retirement accounts from the current 70.5 to 72, allowing broader use of multiple employer plans (MEPs), and allowing 529 plans to pay $10,000 toward student loan debt.

Finally, the bills repeal three taxes (medical device, Cadillac, and health insurance) from the Affordable Care Act that will reduce revenue by $373 billion over a decade, according to the Joint Committee on Taxation.

The bill will now go the President, who is expected to sign them soon.

House Passes Temporary SALT Bill; Action in the Senate Unlikely Next Year

Key Points:

- On Thursday, the House voted on party lines to pass H.R. 5377, which would repeal SALT limits for two years and adjust the caps in 2019, offset by raising the top individual tax rate and broadening the bracket for 5 years.
- On Wednesday, the Trump Administration threatened to veto the bill. The White House has also expressed opposition to increasing the top individual tax rate to 39.6%.
- The Senate is not expected to act on the bill in 2020, making it more of a positioning statement by House Democrats.

This week, the House took up legislation (H.R. 5377) to double the SALT deduction cap in 2019 for joint filers, and eliminate the cap in 2020 and 2021, and is offset by increasing 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).

On December 18, the OMB released a Statement of Administrative Policy that recommended a veto of the House’s attempt to temporarily repeal the $10,000 state and local tax (SALT) deduction cap provision in the 2017 Tax Cut and Jobs Act. President Trump’s Office of Management and Budget (OMB) said in a statement that “the legislation would unfairly force all Federal taxpayers to subsidize a tax break for the wealthy, as well as exceed government spending by fiscally irresponsible States.”

On December 19, the bill passed the House on a party line vote, but it is not expected to receive a vote in the Republican-controlled Senate.
Office of Management and Budget Reviewing Final Section 163(j) Regulations

Key Points:
- The Office of Information and Regulatory Affairs at OMB has received the final version of the 163(j) regulations for review.
- Review by the OIRA is typically the final step before the IRS publishes the regulation.

On December 17, the OMB’s Office of Information and Regulatory Affairs (OIRA) began review of the final IRC section 163(j) rules that follow up on 2018 proposed rules (REG-106089-18). IRS officials have said the final rules will make substantial changes to the proposed rules and address several issues and questions raised over the last year. OIRA has 45 days to complete its review of tax regulations generally, or 10 business days to review proposed regulations related to the Tax Cuts and Jobs Act and designated for expedited review, suggesting final regulations should come out soon.

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

Appropriations Bill Extends the NFIP, TRIA and the Export-Import Bank

Key Points:
- The appropriations package passed by the House and Senate extended the NFIP through September 30, 2020, TRIA through the end of 2027, and the Export-Import Bank through the end of 2026.
- The spending bill funds the SEC at $1.815 billion for FY2020 and the CFTC at $315 million.

This week, the House and Senate passed an appropriations package to fund the government through end of Fiscal Year (FY) 2020. The package included extensions for a number of financial services programs, including:

- The National Flood Insurance Program (NFIP) will be extended through September 30, 2020. The NFIP’s authorization had been set to expire on December 20, 2019.
- The Terrorism Risk Insurance Act (TRIA) will be extended through December 21, 2027. The program had been scheduled to expire at the end of 2020.
- The Export-Import Bank will be reauthorized through December 31, 2026. The package will also extend the Bank’s $135 billion annual exposure cap through the end of FY2027. The agreement includes provisions requiring the Bank to establish a program to provide loans, guarantees, and insurance at rates that are fully competitive with China or another covered country.

The appropriations package funds the Securities and Exchange Commission (SEC) at $1.815 billion and the Commodity Futures Trading Commission (CFTC) at $315 million for FY 2020. The package also requires the SEC to conduct a study and submit a report within one year regarding the composition, compensation, and selection process for the Municipal Securities Rulemaking Board (MSRB). The bill prohibits funds to be used to finalize or issue any rule or order regarding political contribution disclosures. The explanatory statement includes language regarding the Consolidated Audit Trail (CAT) and data security and personally-identifiable information. It encourages the SEC “to ensure institutional stakeholders, and all entities
required to provide data to the CAT, are provided the opportunity to substantively engage with the CAT information security program.”

**Chairman Crapo Announces Opposition to House-Passed SAFE Banking Act**

**Key Point:**
- Senate Banking Committee Chairman Mike Crapo (R-ID) stated that he would not support the SAFE Banking Act, which would allow banks, credit unions, and insurers to provide services to state-licensed cannabis-related businesses.

On December 18, Senate Banking Committee Chairman Mike Crapo (R-ID) released a document outlining his concerns with the Secure And Fair Enforcement (SAFE) Banking Act (H.R. 1595), which passed the House in September. The SAFE Banking Act would allow banks, credit unions, and insurance companies to provide banking and insurance services to state-licensed cannabis-related businesses (CRB) under a safe harbor. In the document, Crapo asserted:

I remain firmly opposed to efforts to legalize marijuana on the federal level, and I am opposed to legalization in the State of Idaho. I also do not support the SAFE Banking Act that passed in the House of Representatives. Significant concerns remain that the SAFE Banking Act does not address the high level potency of marijuana, marketing tactics to children, lack of research on marijuana’s effects, and the need to prevent bad actors and cartels from using the banks to disguise ill-gotten cash to launder money into the financial system. I welcome input from all interested parties on how to thoughtfully address these concerns.

Crapo put out a request of comment on a number of issues, including: (1) Options for addressing public health and safety concerns; (2) Options for addressing legacy cash and money laundering; (3) Options for addressing interstate commerce and banking; (4) Options for addressing hemp provisions and “Operation Choke Point.”

**FDIC Issues Proposed Rule on Brokered Deposit Restrictions**

**Key Point:**
- The FDIC issued a proposed rule to modernize its regulatory framework for brokered deposits.

On December 13, the Federal Deposit Insurance Corporation (FDIC) issued a proposed rule to modernize its brokered deposit regulations. As described in an FDIC press release, the proposal would:

…among other things, modernize a regulatory framework built for a different era to remove regulatory disincentives to offering deposit accounts to customers through different channels.

The proposal would establish a new framework for analyzing whether deposits placed through deposit placement arrangements qualify as brokered deposits. These include arrangements between insured depository institutions (IDIs) and third parties, such as financial technology companies, for a variety of business purposes, including access to deposits, as well as IDIs’ increasing reliance on
new technologies to engage and interact with their customers.

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

SEC Approves Final Rules on Cross-Border Swaps; Proposed Rules on Accredited Investor Definition, Resource Extraction Payments

Key Points:
- The SEC approved three final rules dealing with the cross-border application of security-based swaps regulation.
- The Commission also approved proposed rules amending the definition of an accredited investor and on disclosure of payments by resource extraction issuers.


Chairman Jay Clayton stated that the rules being considered would implement Dodd-Frank Act (DFA) mandates and help to keep pace with changes in technology. He said Title VII of the DFA directed the SEC to create a regulatory regime for security-based swaps, and the rules being considered would set up a compliance regime for security-based swap dealer registration. He said the rules were designed to create regulatory clarity and better harmonize the SEC’s security-based swaps regime with the Commodity Futures Trading Commission’s (CFTC) swaps regime.

The proposed rule on the accredited investor definition would expand the pool of investors eligible to invest in private offerings. The proposed rule would allow qualification based on certain sophistication measures, such as having passed Series 7, 65, or 82 exams. Chairman Jay Clayton and Commissioners Elad Roisman and Hester Peirce supported the proposal, arguing it would expand the opportunities available to investors and enhance capital formation. Commissioners Robert Jackson Jr. and Allison Herren Lee expressed concern that the proposal would expose retail investors to additional risk.

The proposed rule would also expand the pool of Qualified Institutional Buyers (QIBs). An SEC press release explained:

The proposed amendments to the qualified institutional buyer definition in Rule 144A would add limited liability companies and RBICs to the types of entities that are eligible for qualified institutional buyer status if they meet the $100 million in securities owned and investment threshold in the definition. The proposed amendments would also add a “catch-all” category that would permit institutional accredited investors under Rule 501(a), of an entity type not already included in the qualified institutional buyer definition, to qualify as qualified institutional buyers when they satisfy the $100 million threshold.
CFTC Approves Two Proposed Rules and One Final Rule

Key Points:
- The CFTC approved proposed rules on cross-border regulation of swaps and on post-trade name give-up for swap execution facilities.
- The Commission also approved a final rule amending DCO core principles.

On December 18, the CFTC held an open meeting and approved three items: (1) Proposed Rule Regarding Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants; (2) Proposed Rule Regarding Prohibition on Post-Trade Name Give-Up on Swap Execution Facilities; and (3) Final Rule Regarding Amendments to Derivatives Clearing Organization General Provisions and Core Principles. Chairman Heath Tarbert noted that proposed rule on cross-border swaps would better align the CFTC’s regulations with that of the SEC, stressing the benefits of this harmonization.

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

HEALTH

Texas v. Azar Opinion Issued

Key Points:
- The Fifth Circuit issued its opinion in Texas v. Azar, declaring the individual mandate unconstitutional and remanding the question on the status of the rest of the Affordable Care Act to the lower court.
- The Affordable Care Act remains the law of the land until the litigation process in complete.

On December 18, the Fifth Circuit issued its opinion in Texas v. Azar, the case examining the validity of the Affordable Care Act (ACA). The case was appealed to the Fifth Circuit by the Democratic defendants following a ruling by Judge O’Connor in the Northern District of Texas that held the individual mandate is unconstitutional and the rest of the ACA cannot be severed from this provision thereby invalidating the entire law. In a 2-1 opinion, the Fifth Circuit held the individual mandate is unconstitutional but remanded the question of severability back to the lower court. In the opinion, Judge Elrod directed the lower court to more closely consider the individual provisions of the ACA to determine whether or not they are severable from the individual mandate. The opinion also notes the confusion created by the Trump Administration’s changing positions on the law which necessitates closer examination by the lower court.

California Attorney General Xavier Becerra has indicated he intends to immediately appeal the Fifth Circuit decision to the Supreme Court. Four justices would have to agree to grant certiorari; however, even if granted, the Chief Justice would still decide when the case would be placed on the Court’s calendar and if it would get expedited consideration. In all likelihood, the case will be remanded to Judge O’Connor further consideration of the issue of severability. This means likely years of continued litigation on the case as any new opinion from Judge O’Connor will surely be appealed the Fifth Circuit with ultimate appeal to the Supreme Court for final decision. While the litigation is pending, the ACA remains the law of the land. The continued delay in resolution of the ACA’s standing also means there will also likely be no legislative impetus to take action to continue provisions of law such as the protection for pre-existing conditions.
HHS Releases Proposals on Drug Importation

Key Points:
- The Department of Health and Human Services released a proposed rule and draft guidance on drug importation.
- Both will be published on Monday, December 23 with comments on the proposed rule due in 75 days and comments on the draft guidance due in 60 days.

On December 18, the Department of Health and Human Services announced two proposals to permit drug importation. Both will be published in the Federal Register on December 23. Comments on the proposed rule are due 75 days after publication, and comments on the draft guidance are due 60 days after publication.

The proposed rule would implement section 804(b) through (h) of the Federal Food, Drug, and Cosmetic Act (FD&C), which would allow for the importation of prescription drugs from Canada through demonstration programs. The Section 804 Importation Program (SIP), would be co-sponsored by a pharmacist, wholesaler, or a state or non-federal governmental entity and must specify the drugs that would be eligible for import and prove the program would not pose a risk to public safety. The proposed regulation would exclude controlled substances, biological products, infused drugs (including a peritoneal dialysis solution), intravenously injected drugs, and drugs that are inhaled during surgery, and drugs that are subject to risk evaluation and mitigation strategies (REMS) from the definition of “eligible prescription drug.”

A SIP would be required to identify the importer in the U.S. that would buy the drug from a foreign seller in Canada and also identify the foreign seller that would buy an eligible drug from the manufacturer. The foreign seller would be required to be licensed by Health Canada as a wholesaler and registered as a foreign seller by the FDA. When authorized by the FDA, a SIP proposal would submit a pre-import request to the FDA at least 30 days prior to scheduled delivery or entry of a shipment of SIP covered eligible prescription drugs.

The draft guidance describes the FDA’s recommended practices for a drug manufacturer to provide documentation demonstrating the prescription drugs being considered for import from a foreign country are in line with the FDA’s manufacturing and product quality. The draft includes procedures that the drug manufacturers could follow to achieve a National Drug Code (NDC) for FDA approved prescription drugs manufactured to be sold in another country, including biological products. The guidance also recommends that the manufacturers include a statement on the label and in prescribing information to assist pharmacists to dispense and bill the prescription drugs. The draft describes that prescription drugs could be available in hospitals, physicians’ offices, or licensed pharmacies.

Congress Completes FY 2020 Appropriations

Key Points:
- Congress completed work on FY 2020 appropriations this week.
- The final agreement eliminates Affordable Care Act taxes and includes public health program extensions but leaves out major drug pricing proposals and surprise billing.

This week, Congress completed its work on FY 2020 appropriations, funding the government through September 30, 2020. Congress passed two bills: one focused on the domestic
programs, including health care, and one focused on defense and national security. The House passed the domestic spending bill with a vote of 297-120 and the Senate passed it with a vote of 71-23. The President is expected to sign the bills.

The bill includes a total of $94.9 billion for the Department of Health and Human Services (HHS), an increase of $4.4 billion from the 2019 enacted level. The legislation also apportions $89 million for medication-assisted opioid treatment programs. Additionally, the bill funds Alzheimer’s disease research at $2.8 billion, gives $3.1 billion for HIV/AIDS research, and $500 million for the All of Us precision medicine research initiative. The National Institutes of Health (NIH) receives $41.7 billion an increase of $2.6 billion. The legislation provided $7.9 billion in total program level funding for the Centers for Disease Control and Prevention (CDC) with $140 million is allotted for support efforts to reduce new HIV infections by 90 percent in ten years. The Food and Drug Administration (FDA) receives a total of $3.16 billion in discretionary funding, an increase of $91 million from the 2019 enacted level. This includes $75 million to accelerate medical product development as authorized by the 21st Century Cures Act. This legislation has a strong focus on continuing current FDA efforts to advance generic drug reviews and increase medical product manufacturing the United States.

Also included in the agreement were permanent repeals of three taxes enacted under the Affordable Care Act (ACA): the Cadillac Tax, Medical Device Tax, and Health Insurance Tax. The taxes will be fully repealed and are not paid for elsewhere in appropriations. The appropriations package extends funding for 12 health care programs (referred to as “health care extenders”), including the Community Health Centers Fund, Community Mental Health Services demonstration program, and the Special Diabetes Program, through May 22, 2020. The programs will be funded with savings from the Creating and Restoring Equal Access to Equivalent Samples (CREATES) Act of 2019 (S. 340). The Creates Act, which will require brand drug manufacturers to share samples earlier with generic manufacturers, is projected to generate $3.3 billion in extra revenue over the next ten years by expanding the number of generic drugs in the market.

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

TRADE

House Passes USMCA Implementing Bill by Significant Margin, Sending Legislation to Senate

Key Points:

- The House of Representatives voted 385-41 to approve legislation implementing the USMCA.
- The Senate is expected to hold a vote in late January or early February, depending on the length of its impeachment trial.

On Thursday, one day after House Democrats voted to impeach President Trump, the House of Representatives voted 385-41 to pass H.R. 5430, the bill implementing the U.S.-Mexico-Canada Agreement (USMCA). The USMCA garnered strong support from Democrats, including many who were critical of the North American Free Trade Agreement (NAFTA) and previous versions of this agreement. Broad Democratic support is likely attributable to the endorsement of USMCA by historically trade-skeptical labor unions, most notably the AFL-CIO. Democrats were also able to secure a
number of changes to the initial agreement, particularly a fix to the panel-blocking provision, enhanced protections for American workers, more robust environmental protections, and the removal of market exclusivity requirements for biologic drugs.

Despite House Democrats negotiating predominantly with United States Trade Representative (USTR) Lighthizer, House passage of the agreement is widely recognized as a political triumph for President Trump. The President has been a vocal opponent of NAFTA and is looking to tout his achievement in replacing it during his reelection campaign.

Democrats had been wary of handing Trump a victory heading into the 2020 election, but they were able to time the USMCA vote to coincide with their vote on impeachment. House Minority Leader McCarthy (R-CA) suggested this was a major reason for the timing of Democratic support, arguing “the only reason Nancy Pelosi ever brought this up is because she impeached the President last night.”

The deal has now been ratified in the U.S. House and Mexico’s Senate, but still requires ratification in Canada and the U.S. Senate before it can come into force. The U.S. Senate is expected to consider the USMCA in late January or early February, after the conclusion of the impeachment trial. The current outlook in the Senate is favorable, with the deal garnering statements of support from Senators across the ideological spectrum. Even noted free trade critic Senator Sherrod Brown (D-OH) acknowledged, “this one is different, and that’s why I’m supporting it.”

Trade Priorities Include EU and UK Deals in 2020

Key Points:
- USTR Lighthizer said President Trump is interested in focusing on EU and UK trade negotiations in 2020.
- USTR Lighthizer expressed concern about an unbalanced trade relationship with Europe and said the U.S. is considering an increase to recently imposed tariffs.
- Negotiations on a bilateral trade agreement with the UK are expected to pick up after Brexit is finalized.

On Tuesday, U.S. Trade Representative (USTR) Lighthizer said in an interview on Fox Business that, at the behest of President Donald Trump, he will increase his attention on trade negotiations with the European Union (EU) and United Kingdom (UK) in 2020.

USTR Lighthizer described the U.S. as having a “very unbalanced relationship” with Europe on trade and said decreasing the bilateral trade deficits with EU member countries would be a priority in any agreement. USTR Lighthizer also suggested the U.S. could increase the $7.5 billion in retaliatory duties on European goods that it imposed in October in response to a dispute over government subsidies for Airbus. However, he said “our objective is to try to get some kind of negotiated solution.” The U.S. is also prepared to impose levies on countries pursuing digital sales taxes, particularly France.

Negotiations with the UK are expected to commence after Brexit is finalized by January 31, 2020, though depending on Brexit details one could see that date slip as the UK-EU trading relationship is reformulated. USTR Lighthizer did not reveal details on a potential deal, while cautioning that a quick timeline for such an agreement is unlikely.
U.S.-China Phase One Agreement May Be Released Soon, Details of Signing Reportedly Being Worked Out

Key Points:

- President Trump announced Friday that he had spoken with Chinese President Xi Jinping about arranging a formal signing of a trade agreement.
- Administration officials have indicated the agreement will be released shortly and could be signed by early January.

President Trump announced Friday that he spoke with Chinese President Xi Jinping about arranging a formal signing of a “phase one” trade agreement. President Trump also commended China for engaging in large scale purchases of agricultural product. The agreement includes tariff relief for Chinese imports, increased agricultural purchases, and new commitments on intellectual property and technology transfer. The U.S. will maintain 25 percent tariffs on $250 billion of Chinese imports while reducing tariffs on $120 billion of Chinese products to 7.5 percent.

White House trade adviser Navarro confirmed in a CNN interview that the agreement will be signed directly by Presidents Trump and Xi. Previous information from USTR stated that United States Trade Representative (USTR) Robert Lighthizer and Chinese Vice Premier Liu He would sign the agreement. Navarro suggested the agreement would facilitate the purchase of $80 to $100 billion of U.S. farm goods by China over the next two years. He added the details of the 86-page agreement would be released “shortly,” aligning with the public statements from others in the Administration with a timeline for signing the agreement in early January.

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.